

(21,295.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 499.

VERISIMO VASQUEZ VILAS, PLAINTIFF IN ERROR AND
APPELLANT.

vs.

THE CITY OF MANILA.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Bill of exceptions from court of first instance.....	1	1
Complaint.....	1	1
Demurrer	4	3
Order sustaining demurrer.	5	4
Judgment	5	4
Assignment of errors.....	6	4
Judge's certificate to bill of exceptions	6	5
Clerk's certificate to bill of exceptions.....	7	5
Letter transmitting bill of exceptions.....	7	5
Assignment of errors.....	8	6
Petition of appellee to set case, &c.....	8	6
Case set and submitted	9	6
Decision.....	10	7
Petition for rehearing.....	12	7
Exception	13	8

	Original.	Print.
Petition for writ of error.....	14	9
Assignment of errors on writ of error.....	15	9
Writ of error.....	16	10
Order allowing writ of error.....	17	11
Citation and service on writ of error.....	18	11
Bond on writ of error.....	19	12
Judgment.....	20	13
Claim on appeal.....	21	13
Allowance of appeal.....	21	14
Assignment of errors on appeal.....	22	14
Bond on appeal.....	23	14
Citation and service.....	25	15
Clerk's certificate.....	26	16

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

VERÍSIMO VASQUEZ VILAS, Plaintiff,
versus
THE CITY OF MANILA, Defendant.

Be it remembered by the present bill of exceptions that in the above entitled case the following proceedings were had in the Court of First Instance of Manila.

The 26th day of August 1904 the plaintiff presented his complaint in the following form:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

VERÍSIMO VASQUEZ VILAS, Plaintiff,
versus
THE CITY OF MANILA, Defendant.

Now comes the plaintiff and shows to the Court,

1. That he is now and was at all times mentioned in this complaint a resident of the City of Manila, Philippine Islands, and that the defendant is a municipality of the Philippine Islands and as such a body politic and the successor to all the rights and obligations heretofore enjoyed and possessed by and owing and due from the City of Manila as the same was organized and existing under Spanish sovereignty.

2. That on the 30th day of January, 1897, the City of Manila, then a municipality and juridical body and the predecessor of the present defendant, at a public auction awarded through its Auction Board to the plaintiff the contract for the collection of the municipal taxes imposed by and in the said City of Manila upon carriages, wagons, horses and draft animals for the period of three years at the annual compensation of \$16,400, Mexican currency, and thereafter, to-wit, on the 5th day of February, 1897, the said City of Manila by its duly constituted officials and in all respects according to law approved of the acceptance of the said award which the said Auction Board had previously made and on the said last mentioned date formally and definitely ratified and confirmed the said award;

3. That according to the requirements of the conditions of the said award the plaintiff deposited with the said City of Manila on the 10th day of February, 1897, the sum of \$4,920, Mexican cur-

rency, as a guarantee and bond for the fulfillment on his part of the contract for the collection of the said taxes;

4. That the plaintiff entered into the performance of the said contract for the collection of the said taxes and in all respects complied therewith during the months from April, 1897 to June, 1898, inclusive, notwithstanding the fact that in the latter part of the said period the plaintiff was unable on account of fortuitous events over which he had no control and for which he was in no way responsible, to collect from the residents of the City of Manila the taxes which by law they were obliged to pay, notwithstanding the fact that he paid to the City of Manila under his said contract sums of money upon account of such taxes which he was unable to collect and which he has in fact never collected.

5. That in the month of June, 1898 and prior thereto the plaintiff was hindered and prevented by irresistible forces from proceeding further with the collection of the said taxes in that the said City of Manila was in a state of siege and was in the center of the operations of war, whereby the usual and peaceful occupations of its inhabitants were completely suspended and that

3 as a direct and necessary result of the condition of the said City the inhabitants thereof failed, neglected and refused to pay their taxes and it was a matter of physical impossibility for the plaintiff to collect such, and whereby he was prevented through no fault or agency of his own from the further collection of the said taxes; that in August of the said year—1898—and while the condition just referred to continued to exist, the said City of Manila surrendered to the Army of the United States and that thereupon the authorities of the United States administered and directed the affairs of the said City of Manila by and through their military officials until the 31st day of August, 1901, when the present municipal government was established in and for the City of Manila, and that from the time of the occupation of the City of Manila by the forces of the United States, the Government of the United States and its agencies established for the Government and administration of the City of Manila assumed and entered upon the collection of all taxes imposed, without regard to pre-existing contracts for the collection thereof and more especially without regard to the contract of this plaintiff, and, by its acts in that behalf cancelled and abrogated the said contract and thereby absolved and excused plaintiff from all further acts thereunder;

6. That the said City of Manila as existing under Spanish sovereignty and which was the predecessor of the defendant and to all the rights and obligations of which the defendant has succeeded, converted the said deposit to its own use and benefit and that of its inhabitants and the territory embraced within its limits, all of which territory is comprised within the limits and bounds of the present defendant, and that neither the City of Manila as organized under Spanish sovereignty nor its successor the present City of Manila, has returned the said deposit of \$4920, Mexican currency, to the plaintiff or to anyone else in his behalf, or any part thereof, but has failed, refused and still refuses so to do;

7. That the defendant is now indebted to the plaintiff in the sum of \$4,920.00, Mexican currency, together with interest thereon at the rate of 6% per annum from the 1st day of July, 1898, for which sum, together with the costs of this action the plaintiff prays judgment against the defendant.

Manila, August 11, 1904.

VERÍSIMO VASQUEZ VILAS,
By HARTIGAN, MARPLE,
SOLIGNAC, & GUTIERREZ,
His Attorneys.

The 22 day of September 1904 the defendant interposed its demurrer in the following form:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

No. 2911.

VERÍSIMO VASQUEZ VILAS
versus
THE CITY OF MANILA.

Demurrer.

Now comes the defendant in the above entitled action by its attorney and demurs to the complaint on the ground that the facts alleged are not sufficient to constitute a cause of action.

Therefore the defendant prays that it be discharged from the said complaint.

(Sgd.)

MODESTO REYES,
City Attorney, for the Defendant.

5 Received copy,
HARTIGAN, MARPLE,
SOLIGNAC & GUTIERREZ.

The 26th day of March 1906 the Hon. Court made the following order:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

Part III.

Civil Cause No. 2911.

VERÍSIMO VASQUEZ VILAS
vs.
THE CITY OF MANILA.

Order.

This case is on for hearing upon demurrer and the Court being of opinion that the ground of demurrer is well taken, it is therefore: Ordered by the Court that the demurrer be sustained.

Date, Manila, P. I., March 26, 1906.

(Signed)

JOHN C. SWEENEY, *Judge.*

On the 5th day of June 1906 the Court made an order dismissing the complaint as follows:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 2911.

VERÍSIMO VASQUEZ VILAS
vs.
THE CITY OF MANILA.

On the 26th day of March 1906, the demurrer interposed to the complaint was sustained by the Hon. John C. Sweeney, one of the Judges of this Court and the plaintiff excepted.

The plaintiff this day comes and states that he does not desire to amend his complaint;

6 Wherefore this action is hereby dismissed.

Manila, P. I., June 5, 1906.

(Signed)

A. S. CROSSFIELD, *Judge.*

The plaintiff excepted to this order the 13th day of June, 1906.

Assignment of Errors.

The Court erred in sustaining the demurrer to the complaint;
The Court erred in rendering judgment dismissing the complaint.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 2911.

VERÍSIMO VASQUEZ VILAS

vs.

THE CITY OF MANILA.

Judge's Certificate of Bill of Exceptions.

I hereby certify that the foregoing bill of exceptions is correct and contains all the essential parts for a clear understanding of all errors assigned.

Execution of the judgment shall not be stayed unless the appellants execute a good and sufficient bond in the sum of — dollars, with sureties of recognized solvency to the satisfaction of the Court to secure the performance of the judgment appealed from in case it be affirmed in whole or in part.

Manila, June 16, 1906.

(Signed)

A. S. CROSSFIELD, *Judge.*

7 PHILIPPINE ISLANDS, *Manila, ss:*

The undersigned hereby certifies that the foregoing bill of exceptions composed of 7 pages is the original bill of exceptions presented by the appellants and approved by this Court.

In faith whereof I sign these presents in Manila this 20th day of June, 1906.

[Seal of Court.]

(Signed)

R. HERAS, *Clerk.*

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 20th day of June, 1906.

(Signed)

J. E. BLANCO, *Clerk.*

Bureau of Justice of the Philippine Islands.

Court of First Instance, City of Manila.

MANILA, *June 20th, 1906.*

To the Clerk of the Supreme Court of Justice of the Philippine Islands.

SIR: I have the honor to transmit herewith the bill of exceptions, filed by the plaintiff, Verisimo Vasquez Vilas in case numbered 2911 of this Court, entitled Verisimo Vasquez Vilas, *vs.* The City of Manila, comprising seven pages.

Respectfully,

(Signed)

R. HERAS,
Assistant Clerk.

Indorsed: "Supreme Court of the Philippines, Clerk's Office. Received June 20, 1906, at 3:35 P. M."

Thereafter, to-wit, on the 17th of December, 1906, the plaintiff and appellant filed his brief in the Supreme Court and assigned the following errors, to-wit:

1. That the Court erred in sustaining the demurrer to the complaint.
2. That the Court erred in dismissing the plaintiff's complaint.

That thereafter, to-wit, on the fifteenth of January, 1907, counsel for appellee presented the following petition to-wit:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

VERISIMO VASQUEZ VILAS, Plaintiff and Appellant,

vs.

THE CITY OF MANILA, Defendant and Appellee.

To the Honorable the Supreme Court:

The questions involved in the above entitled cause are purely questions of law, and counsel for appellee, having sufficiently discussed the said questions in his briefs in cases 3282 and 3558 now pending in this Court, it is believed that it is unnecessary for him to present any brief in the present cause, and prays the court to consider the briefs presented by him in the aforesaid causes, numbers 3282 and 3558 as the brief in this case.

It is further requested that, in view of the fact that the appellant has already filed his brief, this case be set for hearing on the next calendar of this Court.

(Signed)

MODESTO REYES,

City Attorney, Counsel for Appellee.

(Signed) HARTIGAN, ROHDE & GUTIERREZ.

Thereafter, to-wit, on the seventeenth of January, 1907, the Supreme Court entered an order granting the foregoing petition and directed that the case be set for hearing on the February Calendar, 1907.

That thereafter, to-wit, on the sixth of February, 1907, the case was duly submitted to the Court and was taken under advisement.

Thereafter, to-wit, on the ninth of January, 1908, the Supreme Court of these Islands rendered a decision in the aforesaid cause, which said decision is in the words and figures following, to-wit:

10 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 3449.

VERISIMO VASQUEZ VILAS, Plaintiff and Appellant,

vs.

THE CITY OF MANILA, Defendant and Appellee.

JOHNSON, J.:

On the 11th day of August, 1904, the plaintiff commenced an action in the Court of First Instance of the City of Manila to recover of the present City of Manila the sum of 4920 pesos, with interest from the first day of July, 1898, which sum the plaintiff alleged to be due him from the old City of Manila (the Ayuntamiento de Manila), upon a contract dated the 30th day of January, 1897, made between the present plaintiff and the old City of Manila. To this complaint the defendant presented a demurrer, alleging that the facts stated in the said complaint were not sufficient to constitute a cause of action.

The lower court sustained the demurrer, the plaintiff refused to amend his complaint, and a final judgment was rendered in the said lower court dismissing the action. From this decision of the lower court, the plaintiff appealed to this court.

11 For the reasons stated in Cause No. 3282, Ricardo Aguado *vs.* The City of Manila, the decision of the lower court is hereby affirmed, and without any finding as to costs, it is so ordered.

(Signed)

E. FINLEY JOHNSON.

We concur:

(Sig.) C. S. ARELLANO.
 " FLORENTINO TORRES.
 " A. C. CARSON.
 " CHARLES A. WILLARD.
 " JAMES F. TRACEY.

Justice Mapa did not take part in the decision.

12 R. G. Núm. 3449.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

VERISIMO VASQUEZ VILAS, Appellant,

versus

THE CITY OF MANILA, Appellee.

Petition for Rehearing.

Comes now the appellant and respectfully petitions for a rehearing upon the following grounds:

That the decision of the Court in holding that the present City of

Manila is not liable for the contract obligations of the extinguished municipality of Manila, as organized under the Spanish Government, infringes the eighth (8th) article of the Treaty of Peace entered into between the United States of America and the Kingdom of Spain.

It is an indisputable fact that the extinguished municipality of Manila, or ayuntamiento, could have been sued upon the obligation set forth in the complaint.

Therefore, although the City of Manila has been reorganized it could to-day have been sued upon that obligation, unless it be held that the Treaty mentioned took away that right from the plaintiff or appellant.

If therefore it be held that the Treaty has taken away the right of the appellant to sue the City of Manila for a debt justly due, then it has taken away from him vested property.

Respectfully,

HARTIGAN & ROHDE, & GUTIERREZ,

Attorneys for Appellant.

Manila, Jan. 14, 1908.

13 Thereafter, to-wit, on the sixteenth day of January, 1908, the Court entered an order denying appellant's petition for a rehearing, to which said order, an exception was filed by counsel for the appellant, which said exception is in the words and figures following, to-wit:

R. G. No. 3449.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

VERISIMO VASQUEZ VILAS, Appellant,

versus

THE CITY OF MANILA, Appellee.

Petition for Rehearing.

Comes now the plaintiff in the above entitled cause and excepts to the judgment rendered herein and to the overruling of the petition for rehearing.

(Signed)

HARTIGAN & ROHDE,

Attorneys for Plaintiff.

14

R. G. Núm. 3449.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands. At Law.

VERÍSIMO VASQUEZ VILAS, Plaintiff in Error,
versus
 THE CITY OF MANILA, Defendant in Error.

Petition for Writ of Error.

And now comes Verísimo Vasquez Vilas, plaintiff herein, and says:

That on or about the 9th day of January, 1908, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against this plaintiff, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may be issued in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

HARTIGAN, ROHDE &
 GUTIERREZ,
Attorneys for Plaintiff in Error.

15

R. G. Núm. 3449.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

VERÍSIMO VASQUEZ VILAS, Plaintiff in Error,
versus
 THE CITY OF MANILA, Defendant in Error.

The plaintiff in this case, in connection with his petition for a writ of error, makes the following assignment of errors which he avers exists:

First. The Court erred in sustaining the demurrer of the defendant;

Second. The Court erred in dismissing the plaintiff's suit;

Third. The Court erred in holding that the defendant cannot be sued upon the obligations set out in the complaint; The holding of

the Court in this behalf is in violation of Article 8 of the Treaty of Peace between the United States of America and the Kingdom of Spain.

Wherefore the plaintiff prays that said judgment may be reversed.

HARTIGAN, ROHDE &
GUTIERREZ,

Attorneys for Plaintiff in Error.

16 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you, between Verisimo Vasquez Vilas, plaintiff, and the City of Manila, defendant, a manifest error has happened, to the great damage of the said Verisimo Vasquez Vilas, as by his complaint appears. We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the fifteenth day of June, 1908, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 28th day of January, in the year of Our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty second.

J. E. BLANCO,
*Clerk of the Supreme Court
of the Philippine Islands.*

Allowed by:

E. FINLEY JOHNSON,
*Associate Justice of the Supreme
Court of the Philippine Islands.*

[Stamped:] Supreme Court of the Philippines, Clerk's Office.
Filed Jan. 28, 1908. — M.

17

R. G. Núm. 3449.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands. At Law.

VERÍSIMO VASQUEZ VILAS, Plaintiff in Error,

versus

THE CITY OF MANILA, Defendant in Error.

This 28th day of January, 1908, comes the plaintiff by his Attorney and files herein and presents to the Court his petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court does allow the writ of error upon the plaintiff giving a bond according to law in the sum of One Thousand Dollars, which shall operate as a supersedeas bond.

E. FINLEY JOHNSON,

*Associate Justice of the Supreme Court
of the Philippine Islands.*

[Stamped:] Supreme Court of the Philippines, Clerk's Office.
 Filed Jan. 28, 1908, — M.

18

3449.

[Stamped:] Supreme Court of the Philippines, Clerk's Office.
 Filed Jan. 29, 1908, 9.30 A. M.

UNITED STATES OF AMERICA, *vs.*

To the City of Manila, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 15th day of June, next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Verísimo Vasquez Vilas is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the City of Manila in the Philippine Islands, this 28th day of January in the year of Our Lord one thousand nine hundred and eight.

E. FINLEY JOHNSON,

*Associate Justice of the Supreme Court
of the Philippine Islands.*

Received copy this 28th day of January A. D. 1908.

MODESTO REYES,
City Attorney of Manila.

19 Know all men by these presents, That We, Verísimo Vasquez Vilas, as principal, and William J. Rohde and Philip C. Whitaker as sureties, are held and firmly bound unto the City of Manila in the sum of One Thousand Dollars, to be paid to the said City of Manila, its attorneys, or assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of January in the year of Our Lord one thousand nine hundred and eight.

Whereas, lately in the Supreme Court of the Philippine Islands, in a suit pending in said court between Verísimo Vasquez Vilas, plaintiff, and the City of Manila, defendant, a judgment was rendered dismissing the suit of the said plaintiff and the said Verísimo Vasquez Vilas having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the said suit and a citation directed to the said City of Manila citing and admonishing the said City to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington on the 15th day of June, next,

Now, the condition of the above obligation is such that if the said Verísimo Vasquez Vilas shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void else to remain in full force and virtue.

VERISIMO VASQUEZ.
WM. J. ROHDE.
PHIL. C. WHITAKER.

Signed, sealed and delivered in the presence of

FERMIN MARIANO.
CIRIACO J. BIGLANG-AWA.

Approved by:

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

20 That thereafter, to-wit on the 31st of January, 1908, final judgment was entered in the said Supreme Court of the Philippine Islands in the above entitled cause, which said judgment is in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

January 31, 1908.

Judgment Book 5 f.

File No. 3449.

VERISIMO VASQUEZ VILAS, Plaintiff and Appellant,

vs.

THE CITY OF MANILA, Defendant and Appellee.

This Court having regularly acquired jurisdiction of the above entitled cause, which was submitted by both parties for decision, and after consideration by the Court of the record and proceedings therein, a decision and order for judgment having been filed on the ninth day of January, 1908,

It is hereby ordered, that the judgment of the Court of First Instance of the City of Manila, dated June fifth, 1905, be, and the same is hereby affirmed, without special provision as to costs.

It is further ordered that * * * recover from * * * the sum of * * * as costs.

[Seal of Court.]

(Signed)

J. E. BLANCO,

*Clerk of the Supreme Court of the
Philippine Islands.*

21

R. G. No. 3449.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

VERISIMO VASQUEZ VILAS, Appellant,

versus

THE CITY OF MANILA, Appellee.

The above named plaintiff, conceiving himself aggrieved by the judgment made and entered on the 9th day of January, nineteen hundred and eight, in the above entitled cause, does hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

HARTIGAN & ROHDE,

Attorneys for Plaintiff.

Dated this *sixth* day of March, A. D. 1908.
The foregoing claim of appeal is allowed.

E. FINLEY JOHNSON,
Associate Justice.

Dated this 6th day of March, A. D. 1908.

22

VERISIMO VASQUEZ VILAS, Appellant,
versus
THE CITY OF MANILA, Appellee.

The plaintiff prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for errors:

I.

That the Court erred in sustaining the demurrer of the defendant;

II.

That the Court erred in dismissing the plaintiff complaint;

III.

That the Court erred in holding that the defendant cannot be sued upon the obligation set out in the complaint;

The holding of the Court in this behalf is in violation of Article 8 of the Treaty of Peace between the United States of America and the Kingdom of Spain;

Wherefore plaintiff pray that the decree of the Supreme Court of the Philippine Islands be reversed.

HARTIGAN & ROHDE,
Attorneys for Plaintiff.

23

R. G. No. 3449.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

VERISIMO VASQUEZ VILAS, Appellant,
versus
THE CITY OF MANILA, Appellee.

Know all men by these presents: That we, Wm. J. Rohde, as principal, and Roman Laeson and Thomas L. Hartigan as sureties, are held and firmly bound to the City of Manila in the full sum of One Thousand Dollars to be paid to the said City of Manila or its assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seal and dated this 23 day of March, in the year of Our Lord one thousand nine hundred and eight.

Whereas lately in the Supreme Court of the Philippine Islands, in a suit depending in said Court between Verisimo Vasquez Vilas, plaintiff, and the City of Manila, defendant, a decree was rendered against the said plaintiff, and the said plaintiff having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit and a citation directed to the said City of Manila citing and admonishing the same to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 22nd day of July, 1908;

Now the condition of the above obligation is such that if the said plaintiff shall prosecute their appeal and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed)

WM. J. RHODE.

Signed, sealed and delivered in the presence of:

(Signed)

THOMAS L. HARTIGAN,

(Signed)

ROMAN LACSON,

Sureties.

RAY HARTIGAN,

CASIANO BIGLANGBAN.

Approved:

(Signed) E. FINLEY JOHNSON,

Associate Justice.

25

R. G. No. 3449.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

VERÍSIMO VASQUEZ VILAS, Appellant,

versus

THE CITY OF MANILA, Appellee.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to the City of Manila, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington within one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the Clerk's office of the said Court on the 24 day of March, 1908, in a cause wherein Verisimo Vasquez Vilas are appellant and you are appellee, to show cause, if any, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. Finley Johnson, Associate Justice of the Philippine Islands, this 24 day of March, 1908.

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

Service of a copy of the within citation is admitted this — day of March, 1908.

MODESTO REYES,
Attorney for Appellee.

26 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands do hereby certify that the foregoing twenty-five typewritten pages constitute a true and correct transcript of the record and proceedings in the case of Verisimo Vasquez Vilas, plaintiff in error, *vs.* The City of Manila, defendant in error.

In witness whereof, I have hereunto signed my name and affixed the seal of the said Supreme Court at Manila, Philippine Islands, this eighteenth day of April, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
*Clerk of the Supreme Court of the
Philippine Islands.*

Endorsed on cover: File No. 21,295. Philippine Islands supreme court. Term No. 499. Verisimo Vasquez Vilas, plaintiff in error and appellant, *vs.* The City of Manila. Filed August 10th, 1908. File No. 21,295.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

ORDERED THAT

No. ~~100~~ 54

ESPERANZA OBERO TRIGAS, VENTURA F. VASQUEZ,
MARIA J. O. TRIGAS AND FLORENCIO F. BERNARDINI
PLAINTIFFS IN ERROR AND APPELLANTS

THE CITY OF MANILA

IN REPLY TO AND ANSWER TO THE VERIFICATION OF THE
PHILIPPINE ISLANDS

PRIMA ADVERSUS DE JURE

(11-100)

(21,296.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 500.

ESPERANZA OTERO TRIGAS, VENTURA F. VASQUEZ,
MARIA J. O. TRIGAS, AND FLORENCIO V. BERNARDEZ,
PLAINTIFFS IN ERROR AND APPELLANTS,

vs.

THE CITY OF MANILA.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

INDEX.

	Original.	Print.
Bill of exceptions from court of first instance.....	1	1
Complaint.....	1	1
Demurrer.....	8	5
Decision.....	10	7
Exception to decision and request for judgment.....	13	9
Judgment entered.....	13	9
Assignment of errors.....	13	9
Judge's certificate to bill of exceptions.....	14	9
Clerk's certificate to bill of exceptions.....	14	9
Argued and submitted.....	14	10
Decision	15	10
Petition for rehearing	19	12
Exception	20	13
Judgment.....	20	14

	Original.	Print.
Petition for writ of error.....	22	14
Assignment of errors on writ of error.....	23	15
Writ of error.....	24	15
Order allowing writ of error.....	25	16
Bond on writ of error.....	26	17
Citation and service on writ of error.....	27	18
Claim of appeal.....	28	18
Allowance of appeal.....	28	19
Assignment of errors on appeal.....	29	19
Citation and service on appeal.....	30	19
Bond on appeal.....	31	20
Clerk's certificate.....	33	21

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

Civil Cause No. 2912.

ESPERANZA OTERO TRIGAS ET AL.

versus

THE CITY OF MANILA.

Bill of Exceptions.

Be it remembered by the present bill of exceptions that the following matters and proceedings have taken place in the Court of First Instance of Manila:

On the 25th day of August, 1904, the plaintiffs presented their complaint in the following form:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

ESPERANZA OTERO TRIGAS and Her Husband FRÉGIDO VENTURA VASQUEZ, and MARIA JOSEFA OTERO TRIGAS and Her Husband FLORENCIO VASQUEZ BERNARDES, Plaintiffs,

versus

THE CITY OF MANILA, Defendant.

Now come the above named plaintiffs and for their cause of action say:

1.

That on the — day of September, 1898, there died in the City of Manila, Philippine Islands, whereof he was then a resident, one

Manuel Martinez Lopez, a brother of the plaintiffs Esperanza

2 Otero Trigas and Maria Josefa Otero Trigas, leaving a last will and testament executed in Manila on the 22nd day of

December, 1895, before the Notary Eduardo Martinez, wherein and whereby the said named plaintiffs were made and constituted as sole and universal heirs; that there are no outstanding debts of the said Martinez, deceased, and no unsatisfied claims against his estate, and that these plaintiffs are the sole and unqualified owners of the credits and rights of property and actions herein mentioned; that the defendant is a municipality of the Philippine Islands, and as such a body politic and is the successor to all the rights heretofore possessed by the City of Manila as the same was organized and existed under Spanish sovereignty, and that the defendant has like-

wise succeeded to all the obligations including those mentioned herein heretofore owing and due from the City of Manila as the same existed prior to the organization and constitution of the present City of Manila.

2.

That on or about the 29th of July, 1896, the City of Manila, at that time a municipality and judicial body, and the predecessor of the present defendant, let by public auction to one Francisco Coma y de Maria, a resident of the said City of Manila, a contract for the enlargement and improvement of the water system of the said City of Manila for the agreed sum of 39,978 dollars, Mexican, to be paid by the said City of Manila, and the said work and the said contract to be performed according to written plans, specifications and conditions which were made a part of said contract of letting, and that the said contract was subsequently declared to have been made and was formally executed in favor of the said Manuel Martinez Lopez, now deceased, upon its being made to appear to the said City of Manila that the bid presented at the public
3 auction for the letting of the said work, though made in the name of the said Francisco Coma y de Maria, was on behalf and in the interest of the said Manuel Martinez Lopez.

3.

That thereafter the said Martinez duly entered upon the execution of the said contract and continued in the prosecution and performance thereof until the month of June, 1898, by which time he had received from the said City of Manila upon account of the said contract and its price, the sum of \$25,657.96, and that on the 30th day of April, 1898, the said City of Manila by its duly authorized representative Carlos de las Heras, the Engineer in charge of the said work, issued to the said contractor its certificate in the sum of \$2,400.75 on account of work performed by the said contractor, upon the said contract for the month of April, 1898, and again, on the 31st of May, 1898, the said City of Manila, in the same manner and form issued its certificate to the said contractor in the sum of \$1,665.01 on account of work performed by him in the execution of the said contract for the month of May, 1898, the said City in and by the said certificates reserving of the value of the work so certified as rendered for the said months the respective sums of \$240.07 and \$166.50 on account of deposit for security exacted and obtained by the said City of and from the said contractor until the final acceptance of the said work and for the period of six months thereafter; that no part of the amounts called for and evidenced by the said certificates, including said amounts so retained, has ever been paid by the said City of Manila to the said contractor, or to any one in his behalf, and that the defendant is now indebted to the plaintiffs for said sums and interest thereupon, together with the additional sum hereinbelow mentioned.

4

4.

That under the terms of the said contract there was exacted of the said Martinez, as security for its performance, the sum of \$3996.80, the same being ten per cent. of the contract price of the said work; that of this sum the said contractor had from time to time deposited with the said City of Manila as the same was exacted of him, the amount of \$3153.60, exclusive of the said sums of \$240.07 and \$166.50, so retained by the said City at the execution of the certificates hereinbefore referred to for the months of April and May, 1898, amounting said sums to the total of \$3560.17, which amount received by the said City of Manila has never been returned to the said contractor or to anyone in his behalf, and which sum is due and owing from the defendant to the plaintiffs as the sole heirs and representatives of the said Martinez along with the others sums herein mentioned.

5.

That by the terms of the said contract the royal decree of the 11th of June, 1886, governing the making of contracts for public work in the Philippines was expressly made a part thereof, and that by Article 38 of the said decree it is expressly provided that in the event of the failure of the said City of Manila to pay the contractor for the work performed in the execution of said contract for two months from the date of the execution of the proper certificate issued for such work the said City of Manila should pay the said contractor from expiration of said period of two months interest at the rate of six per centum per annum, and in the event of failure to pay such sum so certified for the period of four months, the said contractor would have the right to rescind the said contract.

5

6.

That the hereinbefore mentioned certificates issued in favor of the said contractor by the said City of Manila for work performed in the said months of April and May, 1898, only partially represented work performed by the said contractor upon the said contract, and for which he had not been previously paid, and that in addition to the amounts represented by the two said certificates there was and had been performed by the said contractor, upon the said contract, for which neither he nor anyone in his behalf has ever been paid by the said City of Manila as then constituted nor its successors, including the defendant, work of the actual and real value of \$4000, Mexican currency, and that such work together with that so certified as hereinabove stated, was rendered according to the terms and conditions of the said contract and accepted, enjoyed and utilized by the said City of Manila as then existing and by the defendant herein, and that for such work the defendant is now indebted to the plaintiffs in the sum of \$4000, together with interest thereon at the rate of six per cent. per annum from the 31st day of August, 1898.

7.

That on the 30th day of June, 1898, there existed in the Philippine Islands, and more especially in the locality known as Santolan, where were and are situated the pumping works of the water system of the City of Manila, and where there was being performed by the said Martinez the said contract, a state of war and insurrection against the then existing Government, and that on the said day the said City of Manila and its officials in charge of the said work abandoned the same and withdrew and retired from the said locality, at the same time setting fire to the temporary buildings which had been constructed by the said Martinez for the prosecution of the work

6 of the said contract, wherein and whereby the same were destroyed together with the materials and implements of the said contract or there situated and used by him in the execution of the said work, and that the actual and real value of the said materials and implements thus abandoned and destroyed, was and is the sum of \$3,765.23 Mexican currency, and that by reason of the said state of war, sedition, tumult and rebellion, and such abandonment on the part of the said City of Manila the further prosecution of the said work on the part of the said Martinez was made impossible.

8.

That subsequent to the occurrences hereinbefore recited the said Martinez in his lifetime duly and in accordance with the law demanded of the said City of Manila the return to him of the money guarantee deposited with the said City of Manila in the sum hereinabove referred to, as well as payment to him of the amount of work performed upon the said contract and for which he had not been paid, including that certified as well as that uncompleted and uncertified at the time of the said abandonment, and also at the same time requested compensation for the value of the materials so as hereinabove stated abandoned and destroyed, but the said City of Manila failed, neglected and refused to pay the said sums or any part thereof, and thereafter, to-wit, on the 2nd day of November, 1898, the executor of the will of the said Martinez, who had since died, repeated the said demands upon the said City of Manila, but that the latter still refused and neglected to pay the same or any part thereof.

9.

That the defendant herein the City of Manila, as constituted by Act No. 183 of the Civil Commission, has succeeded to all the rights and obligations of the City of Manila, as the same existed 7 under Spanish sovereignty, and at the times hereinabove mentioned, and that the works and services performed by the said hereinabove named contractor upon the said contract have been accepted and utilized by the defendant the present City of Manila, and are now enjoyed by the inhabitants thereof, the defendant comprising in its limits the territory embraced and included within the City of Manila as existing under Spanish sovereignty, and that no part of the various sums hereinabove mentioned have been paid,

either by the City of Manila as existing under Spanish sovereignty, or by its successors including the defendant, and that there is now due from the defendant to the plaintiffs the sums: \$3153.60, the amount of the deposit exacted of the hereinbefore named contractor as hereinabove set forth; the further sum of \$4065.31, the amount of the two certificates issued to the said contractor for the months of April and May, 1898, as hereinbefore set forth; the further sum of \$4000, the amount of work performed by the said contractor in his lifetime in the prosecution of the said work, and not as yet certified as having been performed, and the additional sum of \$3765.23, the worth and value of the materials of the said contractor used by him in the performance and prosecution of the said work and destroyed as hereinabove set forth, amounting in all to the sum of \$14,984.14, together with the additional sum of interest at the rate of 6% per annum upon the amount of \$8,065.31 for work performed and executed upon the contract and yet remaining unpaid.

Wherefore the plaintiffs pray judgment against the defendant in the sum of \$14,984.14, with interest at the rate of 6% per annum upon \$8,065.31 from the 31st day of August, 1898; together with the costs of this action and such other and general relief as may be agreeable to justice and consistent with the facts herein.

Manila, August 25, 1904.

HARTIGAN, MARPLE, SOLIGNAC
& GUTIERREZ,

Attorneys for Plaintiffs.

8 On the 25 day of October, 1905, the defendant filed the following demurrer.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

ESPERANZA OTERO TRIGAS and Her Husband, VENTURA FRÉIGIDO VASQUEZ, and MARIA JOSEFA OTERO TRIGAS and Her Husband, FLORENCIO VASQUEZ BERNARDEZ, Plaintiffs,

vs.

THE CITY OF MANILA, Defendant.

Demurrer.

I.

Defendant demurs to the complaint and for cause of demurrer shows:

1. There is a defect of parties plaintiff in this: that the administrator of the estate of Manuel Martinez Lopez should have been made the plaintiff instead of the heirs of said Lopez.

2. That the complaint does not state facts sufficient to constitute a cause of action.

3. That the complaint is unintelligible and uncertain in this

that the various amounts set forth in the same are not stated with sufficient certainty to show whether United States currency or Mexican currency is meant.

4. There is a misjoinder of causes of action in this that causes of action based on contract have been united with a cause of action based upon tort (the abandonment and destruction of property).

9

II.

Defendant demurs to the pretended cause of action based upon the failure of the defendant and its predecessor to pay the certificates for work performed under the alleged contract as set forth in paragraph 3 of the complaint, for the reason that the same does not state facts sufficient to constitute a cause of action.

III.

The defendant demurs to the pretended cause of action based upon the failure of the defendant and its predecessor to pay for the work alleged to have been performed by the contractor in addition to that covered by the certificates as set forth in paragraph 6 of the complaint, for the reason that the same does not state facts sufficient to constitute a cause of action.

IV.

The defendant demurs to the pretended cause of action based upon the failure of the defendant and its predecessors to return the amounts deposited as a guarantee to insure the performance of the contract as set forth in paragraph 4 of the complaint for the reason that the same does not state facts sufficient to constitute a cause of action.

V.

The defendant demurs to the pretended cause of action based upon the failure of the defendant and its predecessors to pay the alleged losses of the contractor caused by the abandonment and destruction of the contractor's property as set forth in paragraph 8 of the complaint for the reason that the same does not state a cause of action.

(Signed)

MODESTO REYES,

City Attorney, Attorney for Defendant.

City Hall, Calzada de Aguadas.

10

On the 11th day of October, 1906, the Hon. A. S. Crossfield made the following order:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance, City of Manila, Part II.

Civil Case No. 2912.

ESPERANZA OTERO TRIGAS ET AL.

versus

THE CITY OF MANILA.

Decision.

This case is now before the court for hearing a demurrer presented by the defendant to the plaintiff's complaint.

Messrs. Hartigan, Rohde & Gutierrez Appeared for the plaintiff. Edmond Block, Esq., appeared for the defendant.

The demurrer is made upon the ground:

1. There is a defect of parties plaintiff, in that the administrator of the estate of Manuel Martinez Lopez alleged to have been entitled to recover the amount stated in the complaint, should have been made the plaintiff, instead of his heirs.

2. That the complaint does not state facts sufficient to constitute a cause for action.

3. That the complaint is unintelligible and uncertain in that the various amounts set forth in the same are not stated with sufficient certainty to show whether United States Currency or Mexican Currency is meant.

4. That there is a misjoinder of causes of action in that causes of action based on contract have been united with a cause of action based upon tort.

Extensive arguments were made and briefs filed by both parties, through their respective Attorneys, and after hearing and
11 carefully considering the same, and examining the record in the case, I am of the opinion that the first, third and fourth grounds of the demurrer are not well taken.

The action is one brought to recover several sums of money, alleged to be due from the City of Manila to the plaintiff's ancestor,—arising in the first place from the fact alleged, that the plaintiff's ancestor entered into a contract for the enlargement and improvement of the water system of the City of Manila in 1896.

That certain of the things to be done under the contract were performed by the plaintiff's ancestor, Manuel Martinez Lopez, and that a portion of the labor was paid for and that the certificates were issued for the service performed in April and May, 1898.

That the said Manuel Martinez Lopez was required as a part of the contract to deposit a certain sum of money as security for the performance of the contract and that such deposit was made, amounting to 3,160.17 pesos; that the said Lopez performed work in the execution of said contract to the value of 4,000 pesos, which had never been paid prior to the 30th day of June, 1898, and that

on the 30th day of June, 1898, there was an insurrection in the Philippine Islands and that the city of Manila abandoned the pumping works of the water system of the city of Manila, where said Manuel Martinez Lopez was at work and had some buildings constructed and these were destroyed by it.

Whatever was done under this contract upon the public works of the then city of Manila, which was under the government of the Ayuntamiento, became a part of the public property. The plaintiffs apparently rely for recovery upon Act 183 on the United States

Philippine Commission, known as the Charter of Manila, 12 claiming that it took over all property of the former city of Manila and became liable for all of its obligations, and further upon the provisions of the Treaty of Paris. That portion of said Act 183, The Charter of Manila, which created the City of Manila, is as follows:

"The inhabitants of the city of Manila, residing within the territory described in section two of this Act, are hereby constituted a municipality, which shall be known as the city of Manila, and by that name shall have perpetual succession, and shall possess all the rights of property herein granted, or heretofore enjoyed and possessed by the city of Manila as organized under Spanish sovereignty."

This constitutes the inhabitants of the city of Manila a municipality, which shall possess all property herein granted or possessed under Spanish sovereignty.

I am of the opinion that no reasonable construction of this section could place upon the defendant the obligation to satisfy the liabilities of the former city of Manila under Spanish sovereignty. The United States obtained from Spain the cessation of all buildings and other immovable property belonging to the Crown of Spain in the Philippine Islands for a consideration which was paid, and was in every sense justified in creating a municipality as a successor to the former city of Manila, and of delivering to it the property purchased, without rendering it liable in any way for the value thereof or responsible in any way for the debts of its predecessor.

The plaintiff may have a claim against the Crown of Spain, which has received from the United States payment for that done by the plaintiff.

It is ordered that the demurrer be and it is sustained, upon the ground that it does not state facts sufficient to constitute a cause for action against the defendant.

A. S. CROSSFIELD, *Judge*.

Manila, October 11, 1906.

13 On the 17th day of October the plaintiffs excepted to the said order in the following form:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

Civil Cause No. 2912.

ESPERANZA OTERO TRIGAS ET AL.

vs.

THE CITY OF MANILA.

Come now the plaintiffs by their Attorneys Hartigan, Rohde & Gutierrez and except to the order sustaining the demurrer of defendant in the above entitled cause.

The plaintiffs further state that they will stand upon the allegations contained in the complaint and therefore ask the final judgment of the Court.

Manila, Oct. 17, 1906.

HARTIGAN, ROHDE & GUTIERREZ.

Attorneys for Plaintiffs.

Received copy this 17th day of October 1906.

MODESTO REYES.

On the 18th day of October 1906 the Court rendered final judgment dismissing the complaint.

On the 19th day of October 1906, the plaintiffs duly except to the judgment of the Court.

Assignment of Errors.

1. The Court erred in sustaining the demurrer interposed by the defendant.

2. The Court erred in dismissing the complaint.

14 I hereby certify that the foregoing bill of exceptions is correct and contains all matters necessary for a clear understanding of the errors assigned.

Execution will not be stayed unless the appellants file a bond in the sum of ——— dollars with sureties of known solvency to the satisfaction of the Court that they will comply with the judgment appealed from should the same be affirmed in whole or in part.

Manila, November 3, 1906.

(Signed)

A. S. CROSSFIELD, *Judge.*

PHILIPPINE ISLANDS, *Manila, ss:*

The undersigned certifies: that the bill of exceptions consisting of 19 pages is the original bill of exceptions presented by the appellants and approved by this Court.

In testimony whereof I have signed these presents this 9th day of November, 1906.

(Signed)

J. McMICKING, *Clerk.*

Supreme Court of the Philippine Islands, Clerk's Office, Filed Nov. 9, 1906.

(Signed)

J. E. BLANCO, *Clerk*.

On the ninth of November, 1905, the case was duly transmitted by the Clerk of the Court of First Instance of Manila to the Clerk of the Supreme Court of the Philippine Islands, where it was received on the same day.

On the seventh of February, 1907, the case was duly argued and submitted to the Supreme Court and was taken under advisement.

On the thirteenth day of January, 1908, a decision was rendered by the Supreme Court of the Philippine Islands, which said decision is in the words and figures following, to-wit:

15 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands,

No. 3703.

ESPERANZA OTERO TRIGAS ET AL., Plaintiffs and Appellants,

vs.

THE CITY OF MANILA, Defendant and Appellee.

JOHNSON, J.:

On the 25th day of August, 1904, the plaintiffs commenced an action in the Court of First Instance of the City of Manila against the defendant to recover the sum of 14,984 pesos and 14 cents, with interest at the rate of six per cent. per annum upon the sum of 8,065 pesos and 31 cents from the 31st day of August 1898, which sums the plaintiffs alleged to be due to them upon a certain contract entered into between the plaintiffs and the old City of Manila (the Ayuntamiento de Manila) some years prior to the American occupation of the Philippine Archipelago.

To this complaint the defendant presented a demurrer, alleging that the facts stated in said complaint did not constitute a cause of action. Upon this demurrer the lower court, upon the 11th day of October, 1906, rendered the following decision:

"The demurrer is made upon the ground:

"1. There is a defect of parties plaintiff, in that the administrator of the estate of Manuel Martinez Lopez alleged to have been entitled to recover the amount stated in the complaint, should have been made the plaintiff, instead of his heirs.

16 "2. That the complaint does not state facts sufficient to constitute a cause for action.

"3. That the complaint is intelligible and uncertain in that the various amounts set forth in the same are not stated with sufficient certainty to show whether United States Currency or Mexican Currency is meant.

"4. That there is a misjoinder of cause of action in that causes of

action based on contract have been united with a cause of action based upon tort.

"Extensive arguments were made and briefs filed by both parties, through their respective Attorneys, and after hearing and carefully considering the same, and examining the record in the case, I am of the opinion that the first, third and fourth grounds of the demurrer are not well taken.

"The action is one brought to recover several sums of money, alleged to be due from the City of Manila to the plaintiff's ancestor,—arising in the first place from the fact alleged, that the plaintiff's ancestor entered into contract for the enlargement and improvement of the water system of the city of Manila in 1896.

"That certain of the things to be done under the contract were performed by the plaintiff's ancestor, Manuel Martinez Lopez, and that a portion of the labor was paid for and that the certificates were issued for the service performed in April and May, 1898.

"That the said Manuel Martinez Lopez was required as a part of the contract to deposit a certain sum of money as security for the performance of the contract and that such deposit was made, amounting to 3,160.17 pesos; that the said Lopez performed work in the execution of said contract to the value of 4,000 pesos, which had never been paid prior to the 30th day of June, 1898, and

17 that on the 30th day of June, 1898, there was an insurrection in the Philippine Islands and that the city of Manila abandoned the pumping works of the water system of the city of Manila, where said Manuel Martinez Lopez was at work and had some buildings constructed and these were destroyed by it.

"Whatever was done under this contract upon the public works of the then city of Manila, which was under the government of the Ayuntamiento, became a part of the public property. The plaintiffs apparently rely for recovery upon Act 183 of the United States Philippine Commission, known as the Charter of Manila, claiming that it took over all property of the former city of Manila and became liable for all of its obligations, and further upon the provisions of the Treaty of Paris. That portion of said Act No. 183, the Charter of Manila, which created the City of Manila, is as follows:

"The inhabitants of the city of Manila, residing within the territory described in section two of this Act, are hereby constituted a municipality, which shall be known as the city of Manila, and by that name shall have perpetual succession, and shall possess all the rights of property herein granted, or heretofore enjoyed and possessed by the city of Manila as organized under Spanish sovereignty."

"This constitutes the inhabitants of the city of Manila a municipality, which shall possess all property herein granted or possessed under Spanish sovereignty.

"I am of the opinion that no reasonable construction of this section could place upon the defendant the obligation to satisfy the liabilities of the former city of Manila under Spanish sovereignty. The United States obtained from Spain the cession of all buildings and other immovable property belonging to the Crown of Spain in the Philippine Islands for a consideration which was paid, and was

18 in every sense justified in creating a municipality as a successor to the former city of Manila, and of delivering to it the property purchased, without rendering it liable in any way for the value thereof or responsible in any way for the debts of its predecessor.

"The plaintiff may have a claim against the Crown of Spain, which has received from the United States payment for that done by the plaintiff.

"It is ordered that the demurrer be and it is sustained, upon the ground that it does not state facts sufficient to constitute a cause for action against the defendant."

The plaintiffs, after this decision upon the demurrer, refused to amend their complaint and a final judgment was rendered from which they appealed to this Court.

For the reasons given in cause No. 3283, Ricardo Aguado *vs.* The City of Manila, the decision of the lower court is hereby affirmed.

It is so ordered.

(Signed)

E. FINLEY JOHNSON.

We concur:

(Sig.) C. S. ARELLANO.
 " FLORENTINO TORRES.
 " VICTORINO MAPA.
 " A. C. CARSON.
 " CHARLES A. WILLARD.

I concur in the result.

(Sig.) JAMES F. TRACEY.

19

R. G. Núm. 3703.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands,

ESPERANZA OTERO TRIGAS Y OTROS

versus

THE CITY OF MANILA.

Petition for Rehearing.

Comes now the appellant- and respectfully petitions for a rehearing upon the following grounds:

That the decision of the Court in holding that the present City of Manila is not liable for the contract obligations of the extinguished municipality of Manila, as organized under the Spanish Government, infringes the eighth (8th) article of the Treaty of Peace entered into between the United States of America and the Kingdom of Spain.

It is an indisputable fact that the extinguished municipality

of Manila, or ayuntamiento, could have been sued upon the obligation set forth in the complaint.

Therefore, although the City of Manila has been reorganized it could to-day have been sued upon that obligation, unless it be held that the Treaty mentioned took away that right from the plaintiff-or appellants.

If therefore it be held that the Treaty has taken away the right of the appellants to sue the City of Manila for a debt justly due, then it has taken away from *him* vested property.

Respectfully,

HARTIGAN & ROHDE.

Attorneys for Appellants.

Manila, Jan. 14, 1908.

On the 16th day of January, 1908, the Supreme Court denied the foregoing petition for a rehearing, and counsel for appellants filed the following exception thereto:

20

R. G. Núm. 3449.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

ESPERANZA OTERO TRIGAS ET AL.

versus

THE CITY OF MANILA.

Petition for Rehearing.

Come now the plaintiffs in the above entitled cause and except to the judgment rendered herein and to the overruling of the petition for rehearing.

HARTIGAN & ROHDE,

Attorneys for Plaintiffs.

On the 25th of January, 1908, the Supreme Court allowed the foregoing exception; and on the fourth day of February, 1908, final judgment was entered herein affirming the judgment of the Court of First Instance of Manila of October 11th, 1906, which said final judgment is in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

February 4, 1908.

Judgment Book 5 f.

Docket No. 3703.

ESPERANZO OTERO TRIGAS ET AL., Plaintiffs and Appellants,
vs.

THE CITY OF MANILA, Defendant and Appellee.

21 This Court having regularly acquired jurisdiction of the above entitled cause, which was submitted by both parties for decision, and after consideration by the Court of the record and proceedings herein, a decision and order for judgment having been filed on the thirteenth day of January, 1908,

It is hereby ordered that the judgment of the Court of First Instance of the City of Manila, dated the eleventh of October, 1906, be and the same is hereby affirmed.

It is further ordered that * * * recover from * * * the sum of * * * as costs.

[Seal of Court.]

(Signed)

J. E. BLANCO,

Clerk of the Supreme Court of the Philippine Islands.

On the fifteenth of February, 1908, the case was remanded to the Court of First Instance of the City of Manila.

On the 28th of February, 1908, counsel for plaintiffs and appellants filed the following petition for a writ of error out of the Supreme Court of the United States, which said petition is in the words and figures following, to-wit:

22

R. G. Núm. 3703.

UNITED STATES OF AMERICA.

Philippine Islands:

In the Supreme Court of the Philippine Islands. At Law.

ESPERANZA OTERO TRIGAS, VENTURA FREIGIDO VASQUEZ, MARIA JOSEFA OTERO TRIGAS, FLORENCIO VASQUEZ BERNARDES, Plaintiffs in Error,

versus

THE CITY OF MANILA, Defendant in Error.

Petition for Writ of Error.

And now come Esperanza Otero Trigás, Ventura Fréigido Vasquez, Maria Josefa Otero Trigás and Florencio Vasquez Bernardes, plaintiffs herein, and say:

That on or about the 13 day of January, 1908, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the defendant and against these plaintiffs, in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of these plaintiffs, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore these plaintiffs pray that a writ of error may be issued in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause duly authenticated, may be sent to the Supreme Court of the United States.

HARTIGAN & ROHDE,
Attorneys for Plaintiffs in Error.

23

R. G. Núm. 3703.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

ESPERANZA OTERO TRIGAS, VENTURA FRÉIGIDO VASQUEZ, MARIA JOSEFA OTERO TRIGAS, FLORENCIO VASQUEZ BERNARDEZ, Plaintiffs in Error,

versus

THE CITY OF MANILA, Defendant in Error.

Assignment of Errors.

The plaintiffs in this case, in connection with their petition for a writ of error, make the following assignment of errors which they aver exists:

First. The Court erred in sustaining the demurrer of the defendant;

Second. The Court erred in dismissing the plaintiffs' suit;

Third. The Court erred in holding that the defendant cannot be sued upon the obligation set out in the complaint; The holding of the Court in this behalf is in violation of Article 8 of the Treaty of Peace between the United States of America and the Kingdom of Spain.

Wherefore the plaintiffs pray that said judgment may be reversed.

HARTIGAN & ROHDE,
Attorneys for Plaintiffs in Error.

24 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the Supreme Court of the Philippine Islands, Greetings:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you between Esperanza Otero Trigas, Ventura F. Vasquez, Maria J. O.

Trigas, and Florencio V. Bernardez, plaintiffs, and the City of Manila, defendant, a manifest error has happened, to the great damage of the said plaintiffs, as by their complaint appears. We, being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 1st day of July, 1908, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 28 day of February, in the year of Our Lord one thousand nine hundred and eight and of the Independence of the United States of America the one hundred and thirty second.

J. E. BLANCO,

Clerk of the Supreme Court of the Philippine Islands.

Allowed by:

E. FINLEY JOHNSON,

*Associate Justice of the Supreme Court
of the Philippine Islands.*

[Stamped:] Supreme Court of the Philippines, Clerk's Office.
Filed Feb. 28, 1908, — M. J. E. Blanco.

25

R. G. Núm. 3703.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands. At Law.

ESPERANZA OTERO TRIGAS, VENTURA FREIGIDO VAZQUES, MARIA JOSEFA OTERO TRIGAS, FLORENCIO VAZQUES BERNARDEZ, Plaintiffs in Error,

versus

THE CITY OF MANILA, Defendant in Error.

This 28 day of February, 1908, come the plaintiffs by their Attorneys and file herein and present to the Court this petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the Court does allow that writ of error upon the plaintiffs giving a bond according to law in the sum of One Thousand Dollars, which shall operate as a supersedeas bond.

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

[Stamped:] Supreme Court of the Philippines, Clerk's Office.
Filed Feb. 28, 1908, — M. Blanco.

26 Know all men by these presents, That We, Esperanza Otero Trigas as principal, and William J. Rohde and Philip C. Whitaker as sureties, are held and firmly bound unto the City of Manila in the sum of One Thousand Dollars, to be paid to the said City of Manila, its attorneys, or assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of January in the year of Our Lord one thousand nine hundred and eight.

Whereas, lately in the Supreme Court of the Philippine Islands, in a suit depending in said court between Esperanza Otero Trigas, Ventura Fréigido Vasquez, Maria Josefa Otero Trigas, and Florencio Vasquez Bernardez plaintiffs, and the City of Manila, defendant, a judgment was rendered dismissing the suit of the said plaintiffs and the said Esperanza Otero Trigas *et al.* having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the said suit and a citation directed to the said City of Manila citing and admonishing the said City to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 15th day of June, next.

Now, the condition of the above obligation is such that if the said Esperanza Otero Trigas *et al.* shall prosecute the said writ of error to effect and answer all damages and costs if *he* fail to make his plea good, then the above obligation to be void else to remain in full force and virtue.

ESPERANZA OTERO TRIGAS,
JOSEFA OTERO TRIGAS,
VERISIMO VASQUEZ,
PHIL. C. WHITAKER,
WM. J. ROIIDE.

Por Su Apoderado,

Signed, sealed and delivered in the presence of
FERMIN MARIANO.

Testigo:

CIRIACO J. BIGLANG-AWA.

Approved by:

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

27 UNITED STATES OF AMERICA, *aa*;

To the City of Manila, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 1st day of July, next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Esperanza Otero Trigas, Ventura F. Vasquez, Maria J. O. Trigas and Florencio V. Bernardez are plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in that behalf.

Given under my hand at the City of Manila in the Philippine Islands, this 28 day of February in the year of Our Lord one thousand nine hundred and eight.

E. FINLEY JOHNSON,
*Associate Justice of the Supreme Court
of the Philippine Islands.*

Recibí copia.

MODESTO REYES,
City Att'y.

[Stamped:] Supreme Court of the Philippines, Clerk's Office.
Filed Feb. 28, 1908, — M.

28

R. G. No. 3703.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

ESPERANZA OTERO TRIGAS ET AL., Appellants,
versus
THE CITY OF MANILA, Appellee.

The above named plaintiffs, conceiving themselves aggrieved by the judgment made and entered on the thirteenth day of January, nineteen hundred and eight, in the above entitled cause, do hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

HARTIGAN & ROHDE,
Attorneys for Plaintiffs.

Dated this sixth day of March, A. D. 1908.

The foregoing claim of appeal is allowed.

E. FINLEY JOHNSON,
Associate Justice.

Dated this 6th day of March, A. D. 1908.

29

R. G. No. 3703.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

ESPERANZA OTERO TRIGAS ET AL., Appellants,

vs.

THE CITY OF MANILA, Appellee.

The plaintiffs pray and appeal from the final decree of this Court to the Supreme Court of the United States, and assign for error:

I.

That the Court erred in sustaining the demurrer of the defendant;

II.

That the Court erred in dismissing the plaintiffs' complaint;

III.

That the Court erred in holding that the defendant cannot be sued upon the obligation set out in the complaint;

The holding of the Court in this behalf is in violation of Article 8 of the Treaty of Peace between the United States of America and the Kingdom of Spain;

Wherefore plaintiffs pray that the decree of the Supreme Court of the Philippine Islands be reversed.

(Signed)

HARTIGAN & ROHDE,
Attorneys for Plaintiffs.

30

R. G. No. 3703.

UNITED STATES OF AMERICA,

Philippine Islands:

In the Supreme Court of the Philippine Islands.

ESPERANZA OTERO TRIGAS ET AL., Appellants,

versus

THE CITY OF MANILA, Appellee.

UNITED STATES OF AMERICA, *ss.:*

The President of the United States to the City of Manila, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington within

one hundred and twenty days from the date of this writ, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands and filed in the Clerk's office of the said Court on the 24 day of March, 1908, in a cause wherein Esperanza Otero Trigás, Ventura Freigido Vasquez, Maria Josefa Otero Trigás and Florencio Vasquez Bernardes are appellants and you are appellee, to show cause, if any, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. Finley Johnson, Associate Justice of the Philippine Islands, this 24 day of March, 1908.

E. FINLEY JOHNSON,

*Associate Justice of the Supreme Court
of the Philippine Islands.*

Service of a copy of the within citation is admitted this — day of March, 1908.

MODESTO REYES,

Attorney for Appellee.

31

R. G. No. 3703.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands,

ESPERANZA OTERO TRIGAS ET AL., Appellants,
versus
THE CITY OF MANILA, Appellee.

Know all men by these presents: That we, Wm. J. Rohde, as principal, and Roman Laeson and Thomas L. Hartigan, as sureties, are held and firmly bound to the City of Manila in the full sum of One Thousand Dollars, to be paid to the said City of Manila or its assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Scaled with our seal and dated this 23 day of March, in the year of Our Lord one thousand nine hundred and eight.

32 Whereas lately in the Supreme Court of the Philippine Islands in a suit depending in said Court between Esperanza Otero Trigás, Ventura Freigido Vasquez, Maria Josefa Otero Trigás, and Florencio Vasquez Bernardes, plaintiffs, and the City of Manila, defendant, a decree was rendered against the said plaintiffs, and the said plaintiffs having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the decree in the aforesaid suit and a citation directed to the said City of Manila citing and admonishing the same to be and appear at a session of the Supreme Court of the United States to be holden at the City of Washington on the 22 day of July, 1908;

Now the condition of the above obligation is such that if the said plaintiffs shall prosecute their appeal and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed)

WM. J. ROHDE.

"

THOMAS L. HARTIGAN.

"

ROMAN LACSON.

Signed, sealed and delivered in the presence of

RAY HARTIGAN.

CASIANO BIGLANGLIM.

Approved:

(Signed) E. FINLEY JOHNSON,

Associate Justice.

33 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing thirty-two typewritten pages constitute a true and correct transcript of the record and proceedings in the case of Esperanza Otero Trigas *et al.*, plaintiffs in error, *vs.* The City of Manila, defendant in error.

In witness whereof, I have hereunto signed my name and affixed the seal of the said Supreme Court at Manila, Philippine Islands, this eighteenth day of April, A. D. 1908.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO.

Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 21,296. Philippine Islands supreme court. Term No. 500. Esperanza Otero Trigas, Ventura F. Vasquez, Maria J. O. Trigas, and Florencio V. Bernardez, plaintiffs in error and appellants, *vs.* The City of Manila. Filed August 10th, 1908. File No. 21,296.



(21,632.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1910.

No. 207.

RICARDO AGUADO, APPELLANT,

vs.

THE CITY OF MANILA.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print
Caption.....	1	1
Proceedings in court of first instance.....	2	1
Complaint and amended complaints filed.....	2	1
Third complaint.....	3	1
Statement as to documents attached to complaint.....	14	7
Statement as to default.....	15	7
Answer.....	16	8
Agreed statement of facts.....	18	9
Exhibit A—Extracts from “Carriedo and His Works”.....	27	14
Stipulation as to translation.....	47	25
Deposition of Carlos de las Heras.....	48	25
Document A—Certificate of Carlos de las Heras, July 8, 1898.....	51	27
B—Statement of appraisal No. 11 for April, 1898.....	52	28
C—Résumé for the liquidation of the service.....	53	29
Exhibit B—Contract for coal, &c.....	55	30
C—Assignment of contract, &c.....	69	37
Decision.....	74	40
Exception to decision.....	78	41
New trial prayed and denied.....	78	41
Judge's certificate to bill of exceptions.....	78	42
Certificate of clerk of court of first instance.....	78	42

	Original.	Print
Opinion by Johnson, J.	80	42
Petition for rehearing.	96	52
Petition for rehearing denied	99	53
Petition for appeal	100	53
Assignment of errors	101	54
Order allowing appeal.	103	55
Bond on appeal.	104	55
Citation and service.	106	57
Stipulation as to record on appeal	107	58
Clerk's certificate to transcript.	108	58
Certified copy of judgment	109	59

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RICARDO AGUADO, Plaintiff and Appellant,
vs.
THE CITY OF MANILA, Defendant and Appellee.

Record of the Proceedings of the Supreme Court of the Philippine Islands in Cause and Matter Hereinafter Stated, and the Same Being Disposed of at a Regular Term of said Court, Began and Held at the City of Manila, in said Philippine Islands, on the Second Monday in July, Being the 8th Day of said Month, in the Year of Our Lord One Thousand Nine Hundred and Seven, and of the Independence of the United States of America the One Hundred and Thirty-second, to-wit, on the 14th Day of January, A. D. 1908.

Present, the Honorable C. S. Arellano, Chief Justice, and F. Torres, V. Mapa, E. F. Johnston, A. C. Carson, C. A. Willard, and J. F. Tracey, Associate Justices.

Said action was tried in said Supreme Court of the Philippine Islands on appeal from the Court of First Instance of the City of Manila and proceeded to final disposition at the term and day above written, and during the progress thereof pleadings and papers were filed, process was issued and returned, and orders of the court were made, and entered in the order and on the dates hereinafter stated, to-wit:

2 1. On the 28th day of April, 1903, plaintiff filed a complaint in writing in the Court of First Instance of the City of Manila, which, on motion of the defendant, was ordered to be amended by said court on the 29th day of May, 1903.

2. On the 9th day of June, 1903, plaintiff duly filed an amended complaint in said court, to which defendant interposed a demurrer, and on the 4th day of April, 1904, the said court ordered the plaintiff to amend said amended complaint.

3. On the 21 day of April, 1904, plaintiff filed his third complaint in writing in the following terms:

3 Title of Court and Cause.

Now comes the above named plaintiff and complaining of the defendant in this action for cause of action alleges:

1. That the defendant, the City of Manila, is now, and at all times since the 31st day of July, 1901, has been a municipal corporation duly organized and existing under and by virtue of the laws of the Philippine Islands.

2. That the Carriedo Waterworks are now, and, for more than 100 years last past, have been a trust property continuously administered by successive trustees constituted and appointed in the manner and for the purposes set forth in the last will and testament of the deceased Carriedo.

3. That on the 11th day of June, 1897, and for many years prior thereto, and during more than one year thereafter, the Ayuntamiento of Manila was the duly constituted and acting trustee and administrator of said Carriedo Waterworks.

4. That on or about the said 11th day of June, 1897, Tomas Luna Muñoz made and executed a certain contract with said Ayuntamiento of Manila, as the trustee and administrator of said Carriedo Waterworks, for the sale and delivery by the former unto the latter of 1,600 tons of coal for the use and purpose of said Carriedo Waterworks, at the stipulated price of 12 pesos, Mexican Currency, per ton, the terms and conditions of said contract being detailed and set forth in a certain public instrument made and executed on June 11, 1897, a copy of which is annexed to the record in the above entitled cause, and is hereby expressly referred to and made a part of this complaint.

4 5. That prior to the 1st day of April, 1898, and under and in accordance with the terms of said contract, the said Tomas Luna Muñoz sold and delivered to said Ayuntamiento of Manila, as the trustee and administrator of the Carriedo Waterworks 1,340.31 tons of coal, and received and collected therefore of and from said Ayuntamiento of Manila as such trustee and administrator the sum of 16,083.60 pesos, Mexican Currency, according to the contract price.

6. That between the 1st day of April, 1898, and the 30th day of April, 1898, under and in accordance with the terms of said contract, the said Tomas Luna Muñoz sold and delivered to said Ayuntamiento of Manila, as trustee and administrator of said Carriedo Waterworks, 259.71 tons of coal, of the value of 3116.40 Pesos, Mexican Currency, at the contract price of 12 pesos Mexican Currency, per ton.

7. That thereafter, to-wit:—On or about the 26th day of July, 1898, the said Tomas Luna Muñoz demanded, in the form required by law, and in accordance with the terms of the contract, the payment of said sum of 3,116.40 Pesos, Mexican Currency, being the sum due for the said 259.71 tons of coal delivered as aforesaid during the said month of April, 1898, but notwithstanding said demand said sum was not paid by the said Ayuntamiento of Manila as such trustee and administrator of the Carriedo Water Works, and said sum, and the whole thereof, remains wholly unpaid.

8. That thereafter, to-wit: On or about the 13th day of August, 1898, the said Ayuntamiento of Manila was *forceably* suspended in the exercise of its functions as trustee and administrator of the Carriedo Waterworks by the conquest and occupation of the City of Manila by the Military Force of the United States of America; that during all the time from said 13th day of August, 1898, to the 6th day of August, 1901, the Military Govern-

5

ment of the United States of America was the duly constituted and acting trustee and administrator of the Carriedo Waterworks, and, as the successor of the defunct Ayuntamiento of Manila in such capacity, was in possession of said waterworks, as well as of the funds, property, rents and income pertaining thereto.

9. That at various times between the 13th day of August, 1898, and the 6th day of August, 1901, the Military Government of the United States in the Philippine Islands was requested, in the form prescribed by law, and in accordance with the terms of said contract, for the payment of said sum of 3,116.40 pesos, Mexican Currency, due, owing and unpaid as aforesaid, and that said sum and the whole thereof was not paid, and remains due, owing and unpaid as hereinabove set forth.

10. That on or about the 10th day of February, 1899, the said Tomas Luna Muñoz sold, transferred and assigned all of his right, title and interest in and to the said sum of 3,116.40 pesos, Mexican Currency, then due on account of said contract above set forth to the plaintiff above named, and ever since said plaintiff above named has been and now is the sole and exclusive owner of said credit of 3,116.40 pesos, Mexican Currency.

11. That on or about the 6th day of August, 1901, the defendant City of Manila became the duly constituted, qualified and acting trustee and administrator of the Carriedo Waterworks, and at all times since said 6th day of August, 1901, said defendant has been,

and now is, the duly constituted, qualified and acting successor of the Military Government of the United States in the Philippine Islands, and of the Ayuntamiento of Manila, respectively, in the administration of the trust above referred to, and in such capacity, during all of said time, has been, and now is, in possession of said Carriedo Waterworks, and of the funds, property, rents and income thereof.

12. That at various times since the 6th day of August, 1901, the plaintiff has duly demanded of the defendant, as the trustee and administrator of the Carriedo Waterworks, in the form prescribed by law, and in the terms of said contract, the payment of said sum of 3,116.40 pesos, Mexican Currency, due and owing as hereinabove set forth, and the said defendant has wholly failed, omitted and refused to pay said sum, or any part thereof, and said sum still is due, owing and unpaid.

13. The said defendant, the City of Manila, at all times since said 6th day of August, 1901, has had, and now has, more than sufficient funds, property, rents and income of said Carriedo Waterworks to wholly pay and liquidate said debt of 3,116.40 pesos, Mexican Currency.

And for a further distinct and separate cause of action against said defendant the plaintiff alleges:

1. That the defendant, the City of Manila, is now, and at all times since the 31st day of July, 1901, has been a municipal corporation duly organized and existing under and by virtue of the laws of the Philippine Islands.

2. That the Carriedo Waterworks are now, and for more than 100

years have been, a trust property continuously administered by successive trustees constituted and appointed in the manner and for the purposes set forth in the last will and testament of the deceased Carriedo.

3. That on the 11th day of June, 1897, and during many years prior to said date, and during more than one year thereafter, the Ayuntamiento of Manila was the duly constituted and acting trustee and administrator of the Carriedo Waterworks.

4. That on or about the 11th day of June, 1897, Tomas Luna Muñoz made and executed a certain contract with said Ayuntamiento of Manila, as the trustee and administrator of the Carriedo Waterworks, for the sale and delivery to the latter of a certain quantity of coal for the uses and purposes of said waterworks; that a copy of said contract is attached to the record in the above entitled cause, and the same is hereby expressly referred to and made a part of this complaint.

5. That under and in accordance with the terms of said contract the said Tomas Luna Muñoz, on or about the 1st day of June, 1897, deposited the sum of 1,920 pesos, Mexican Currency, in the hands of said Ayuntamiento of Manila, as trustee and administrator as aforesaid, as a guaranty to secure the fulfillment and discharge of said contract; that under and in accordance with the terms of said contract, the said deposit, or guaranty, would be refunded and returned by said Ayuntamiento of Manila, as such trustee and administrator, unto said Tomas Luna Muñoz upon the discharge and fulfillment of said contract by said Tomas Luna Muñoz.

6. That prior to the 30th day of April, 1898, the said Tomas Luna Muñoz had truly and faithfully fulfilled all the terms and requirements of said contract, and had truly and faithfully fulfilled and carried out the obligations prescribed and contained therein.

7. That thereafter, to-wit: on or about the 26th day of June, 1898, the said Tomas Luna Muñoz duly demanded, in the manner prescribed by law, and by the terms of said contract, the return and refund by the Ayuntamiento of Manila, as trustee and administrator of the Carriedo Waterworks, of said sum of 1,920 pesos, Mexican Currency, returnable and refundable and due unto said Tomas Luna Muñoz as aforesaid, and that the said Ayuntamiento of Manila has wholly failed, omitted and refused to make said refund or return of said sum of 1,920 pesos, Mexican Currency, and the whole of said sum remains unpaid and due.

8. That thereafter, to-wit: on or about the 13th day of August, 1898, the said Ayuntamiento to Manila was *forceably* suspended in the exercise of its functions as trustee and administrator of the Carriedo Waterworks by the conquest and occupation of the City of Manila by the Military Forces of the United States of America; that during all of the time between said 13th day of August, 1898, and the 6th day of August, 1901, the Military Government of the United States of America in the Philippine Islands was the duly constituted and acting trustee and administrator of the Carriedo Waterworks, and as the successor of the defunct Ayuntamiento of Manila, in such

capacity, was in possession of said Carriedo Waterworks and its funds, properties, rents and income.

9. That at various times between the 13th day of August, 1898, and the 6th day of August, 1901, the Military Government of the United States of America in the Philippine Islands was duly requested, in the form prescribed by law, and in accordance with the terms of the contract, to pay the said sum of 1,920 pesos, Mexican Currency, due owing and unpaid as aforesaid, and said sum was not paid, but remained wholly due, owing and unpaid as aforesaid.

10. That on or about the 10th day of February, 1899, said Tomas Luna Muñoz sold, transferred and assigned all of his right, title and interest in and to said sum of 1,920 pesos, Mexican Currency, then due and owing by reason of the contract above referred to, to the above named plaintiff, and said plaintiff, ever since said last mentioned date, has been, and now is, the sole and exclusive owner of said credit of 1,920 pesos, Mexican Currency.

11. That on or about the 6th day of August, 1901, the defendant City of Manila became the duly constituted, qualified and acting trustee and administrator of the Carriedo Waterworks, and at all times since said 6th day of August, 1901, said defendant has been, and now is, the duly constituted, qualified and acting successor of the Military Government of the United States of America in the Philippine Islands, and of the Ayuntamiento of Manila, respectively, in the administration of the trust property above mentioned, and, in such capacity, during all of said time, has been, and now is, in possession of said Carriedo Waterworks, and of the funds, properties, rents and income thereof.

12. That at various times since the 6th day of August, 1901, the plaintiff has duly demanded of the defendant, as the trustee and administrator of the Carriedo Waterworks, in the form prescribed by law, and in accordance with the terms of the contract, the payment of said sum of 1,920 pesos, Mexican Currency, due and owing as above set forth, and said defendant has wholly failed, omitted and refused to pay the same, or any part thereof, and said sum still is due, owing and unpaid.

13. That the said defendant, the City of Manila, at all times since the said 6th day of August, 1901, has had, and now has, more than sufficient of the funds, properties, rents and income of said Carriedo Waterworks to wholly pay and liquidate the said debt of 1,920 pesos, Mexican Currency.

And for a further separate and distinct cause of action against said defendant the plaintiff alleges:

1. That the defendant City of Manila is now, and at all times since the 31st day of July, 1901, has been a municipal corporation duly organized and existing under and by virtue of the laws of the Philippine Islands.

2. That the Carriedo Waterworks are now, and during more than 100 years has been a trust property continuously administered by successive trustees constituted and appointed in the manner and for

the purposes set forth in the last will and testament of the deceased Carriedo.

3. That on the 30th day of June, 1897, and during many years prior thereto, and during more than one year thereafter, the Ayuntamiento of Manila was the duly constituted and acting trustee and administrator of the Carriedo Waterworks.

4. That on or about the 30th day of June, 1898, the Ayuntamiento of Manila, as such trustee and administrator, obtained and received from plaintiff 39 tons of Australian coal for the uses and purposes of said Carriedo Waterworks.

5. That said 39 tons of Australian coal were reasonably worth the sum of 15 pesos, Mexican Currency, per ton, or a total sum of 585 pesos, Mexican Currency.

6. That thereafter, to-wit: on or about the 26th day of July, the said Ricardo Aguado duly demanded, in the form prescribed by law, and in accordance with the terms of the above mentioned contract, the payment of said sum of 585 pesos, Mexican Currency, which sum was owing for the said 39 tons of Australian coal delivered as aforesaid in the month of July, 1898; that notwithstanding said demand said sum was not paid by said Ayuntamiento of Manila, as such trustee and administrator of the Carriedo Waterworks, and said sum, and the whole thereof, remained wholly due and unpaid.

7. That thereafter, to-wit: on or about the 13th day of August, 1898, the said Ayuntamiento of Manila was forcibly suspended in the exercise of its functions as trustee and administrator of the Carriedo Waterworks, by the conquest and occupation of the City of Manila by the Military Forces of the United States of America, and at all times from said 13th day of August, 1898, to the 1st day of July, 1901, the Military Government of the United States of America in the Philippine Islands was the duly constituted and acting trustee and administrator of the Carriedo Waterworks, as the successor of the defunct Ayuntamiento of Manila, and in such capacity was in possession of said Carriedo Waterworks and the funds, properties, rents and incomes thereof.

8. That at various times between the 13th day of August, 1898, and the 31st day of July, 1901, said Military Government of the United States of America in the Philippine Islands was duly requested, in the manner prescribed by law, and in accordance with the terms of said contract, to pay the said sum of 585 pesos, Mexican Currency, due, owing and unpaid as aforesaid, and that said sum, and the whole thereof, was not paid and remained due, owing and unpaid as aforesaid.

9. That on or about the 6th day of August, 1901, the defendant City of Manila became the duly constituted, qualified and acting trustee and administrator of the Carriedo Waterworks, and at all times since said 6th day of August, 1901, said defendant has been, and now is, the duly constituted, qualified and acting successor of the Military Government of the United States in the Philippine Islands, and of the Ayuntamiento of Manila, respectively, in the administration of the trust property above mentioned, and in such capacity, during all of the aforementioned time, has been, and now

is, in possession of said Carriedo Waterworks and the funds, properties, rents and incomes thereof.

10. That at various times since the 6th day of August, 1901, the plaintiff has duly demanded of the defendant, as trustee and administrator of the Carriedo Waterworks, in the manner prescribed by law, and in accordance with the terms of the said contract, the payment of said sum of 585 pesos, Mexican Currency, due and owing as aforesaid, and the said defendant has wholly failed, omitted and refused to pay said sum or any part thereof, and said sum still remains due, owing and unpaid.

11. That said defendant, the City of Manila, at all times since the said 6th day of August, 1901, has had, and now has, more than sufficient funds, properties, rents and incomes of said Carriedo Waterworks to wholly pay and liquidate said debt of 585 pesos, Mexican Currency.

Wherefore the plaintiff prays that judgment be rendered against the defendant, as trustee and administrator of the Carriedo Waterworks, ordering, adjudging and decreeing that the defendant pay to the plaintiff, out of the funds, properties, rents and incomes of said Carriedo Waterworks, the sum of 5621.40 pesos, Mexican Currency, together with legal interest thereon from the 1st day of May, 1898, for costs of this action, and for whatever other remedy which may be meet in law and equity.

Manila, P. I., April 20, 1904.

COUDERT BROTHERS,
JOHN W. HAUSSERMANN,
CHARLES C. COHN,
ALBERTO BARRETTO,
Attorneys for Plaintiff.

14. Annexed to the said complaint, and forming a part thereof, were filed the following documents:

First. A simple copy of the contract for the supply of 1600 tons metric of Australian coal for the use of the pumping plant of the water supply service at Santolan, executed by Tomas Luna Muñoz Mercado in favor of the most excellent Ayuntamiento of this city; and

Second. A first copy, No. 86, of an instrument of sale, assignment and transfer for the sum of 1920 pesos of the contract for the supply of 1600 tons metric of coal, executed by Tomas Luna Muñoz Mercado in favor of Ricardo Aguado y Goñi, acknowledged before Enrique Barrera y Caldes in Manila on February 10, 1899.

— That said documents are in the words and figures set forth hereinafter in annexes "B" and "C" in the documentary evidence.

15. Fourth. That on the 8th day of September, 1905, an order was given and made declaring the defendant in default herein, and on the 28th day of September, 1905, the said defendant filed a motion praying that said order of default be set aside and annulled upon the grounds set forth in two affidavits attached to said motion, and on the 30th day of September, 1905, the Court of First

Instance of the City of Manila revoked the order of default against the defendant.

Fifth. That on the 3rd day of October, 1905, the defendant filed its answer to the amended complaint in the following terms:

(Title of Court and Cause.)

Now comes the defendant in the above entitled cause, and in answer to the first cause of action set forth in the complaint of plaintiff, says:

1. The defendant admits the allegations of paragraph 1 of the complaint in said cause of action.

2. The defendant denies each and all of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the complaint in said cause of action.

The defendant in answer to the second cause of action alleged in the complaint of plaintiff says:

1. That defendant admits the allegations of paragraph 1 of the complaint in said cause of action.

2. The defendant denies each and all of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the complaint in said cause of action.

The defendant in answer to the third cause of action alleged in the complaint of plaintiff says:

1. The defendant admits the allegations of paragraph 1 of the complaint in said cause of action.

2. The defendant denies each and all of the allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 of the complaint in said cause of action.

Furthermore, the defendant, in answer to the entire complaint of plaintiff, and to the three causes of action therein set forth, denies each and all of the allegations therein contained not specifically admitted herein.

Wherefore the defendant prays the court that it be absolved from the complaint of plaintiff with its costs.

17 Dated at Manila P. I., on the 3rd day of October, 1905.

MODESTO REYES, *City Attorney,*

Attorney for the Defendant.

Sixth. That on the 7th day of November, 1905, said cause came on for trial and the respective parties stipulated that the following should be an agreed statement of facts upon which the judgment herein should be based:

18

Title of Court and Cause.

Before the Hon. J. C. Sweeney, Judge, Nov. 7, 1905.

Appearances:

Messrs. Coudert Brothers for the Plaintiff.

Mr. Block, Assistant City Attorney, for the Defendant.

Now came the respective parties hereto, plaintiff and defendant, duly represented by counsel, and stipulate and agree that for the purposes of the above entitled action, the following statement of facts shall be regarded as established and proved, and that the decision in said above entitled action shall be based upon said statement of facts:

I.

That the defendant, the City of Manila, is now and ever since the 31st day of July, 1901, has been a municipal corporation, duly organized and existing under and by virtue of the laws of the Philippine Islands.

II.

That on the 11th day of June, 1897, and for many years prior thereto and for more than one year thereafter, the Ayuntamiento de Manila was a municipal corporation duly organized and existing under and by virtue of the laws of the Kingdom of Spain.

III.

That on or about the 11th day of June, 1897, Tomas Luna Munos made and entered into a certain contract with the said Ayuntamiento de Manila, said contract being in the terms and figures appearing in the copy thereof annexed to the complaint.

19

IV.

That prior to the 1st day of April, 1898, under and in pursuance of the terms of said contract, the said Tomas Luna Munoz sold and delivered unto the said Ayuntamiento de Manila 1340.30 tons of coal and received and collected therefor, of and from said Ayuntamiento de Manila, the sum of 16,083.60 pesos Mexican Currency, the contract price thereof; that between the 1st day of April, 1898, and the 30th day of April, 1898, under and in pursuance of the terms of said contract, the said Tomas Luna Munoz sold and delivered unto the said Ayuntamiento of Manila, 259.70 tons of coal of the value of 3,116.40 pesos Mexican Currency, at the contract price of 12 pesos Mexican currency per ton.

V.

That thereafter, to-wit: on or about the 26th day of July, 1898, the said Tomas Luna Munoz made due demand in the manner required by law and by the terms of said contract for the payment of said sum of 3,116.40 pesos, being the amount due as aforesaid for

said 259.70 tons of coal delivered, as aforesaid, during the month of April, 1898. That, notwithstanding said demand, the said sum was not paid by said Ayuntamiento of Manila and the same, and the whole thereof, remained and now remains wholly due and unpaid.

VI.

That thereafter, to-wit:—on or about the 13th day of August, 1898, the said Ayuntamiento of Manila was forcibly suspended in the exercise of all of its functions by the conquest and occupation of the

City of Manila by the military forces of the United States of America. That at all times between the said 13th day of August, 1898, and the 6th day of August, 1901 the Military Government of the United States of America was the acting successor of the Ayuntamiento of Manila and as such was possessed of the funds, property and revenue theretofore in the possession of the said Ayuntamiento of Manila.

VII.

That at the various times between the 13th day of August, 1898, and the 6th day of August, 1901, demand was duly made upon the said military government of the United States in and for the Philippine Islands, in the manner required by law and by the terms of said contract for the payment of said sum of 3,116.40 pesos Mexican Currency, due, payable and unpaid as aforesaid, and the said sum, and the whole thereof, was not paid but remained and now remains due, payable and unpaid.

VIII.

That on or about the 1st day of February, 1899, the said Tomas Luna Munoz sold, transferred and assigned all of his right, title and interest in and to said sum of 3,116.40 pesos Mexican currency unto the plaintiff hereinbefore named and said plaintiff, ever since last named date has been and now is the sole and exclusive owner of said credit of 3,116.40 pesos Mexican Currency.

IX.

That on or about the 6th day of August, 1901, the defendant, the City of Manila, became the acting successor of the above named entities in the discharge of all of the municipal functions.

21

X.

That at various times since the said 6th day of August, 1901, plaintiff has made due demand upon the defendant in the manner required by law and by the terms of said contract for the payment of said sum of 3,116.40 pesos Mexican Currency and the said defendant has failed and refused to pay said sum or any part thereof and the same remains due and wholly unpaid.

XI.

That in addition of the foregoing facts and under and in pursuance of the terms of said contract, said Tomas Luna Munoz did, on or about the 1st day of June, 1897, deposit the sum of 1,920 pesos Mexican currency with the said Ayuntamiento of Manila as security to guarantee the fulfilment and completion of the above mentioned contract. That prior to the 30th day of April, 1898, said Tomas Luna Munoz had well and truly fulfilled all the terms and requirements of said contract and had faithfully and truly discharged and fulfilled the obligations therein prescribed and contained.

XII.

That at various times thereafter the said Tomas Luna Munoz and his successor in interest, has made due demand in the manner required by law and by the terms of said contract for the return and repayment by the Ayuntamiento of Manila, by the Military Government of the United States in the Philippine Islands and by the defendant, the City of Manila, respectively, for the return and repayment of said sum of 1,920 pesos, that *that* said entities have successively wholly failed to return the whole or any part of said sum and the whole thereof remains due, unpaid and payable.

22

XIII.

That on or about the 10th day of February, 1899, the said Tomas Luna Munoz sold and transferred and assigned all of his right, title and interest in and to said sum of 1920 pesos Mexican currency above mentioned unto the plaintiff herein and said plaintiff ever since has been and now is the sole and exclusive owner of said credit.

XIV.

That on or about the 30th day of June, 1898, the Ayuntamiento of Manila had and received of plaintiff 39 tons of Australian coal for the uses and purposes of the said Carriedo Water Works; that said 39 tons of Australian coal was reasonably worth the sum of 15 pesos per ton, or a sum total of 585 pesos. That thereafter and on or about the 26th day of July, 1898, the said plaintiff made due demand in the manner required by law for the payment of said sum 585 pesos Mexican currency. That notwithstanding said demand said sum was not paid by said Ayuntamiento de Manila. That thereafter, at various times, said plaintiff has similarly made due demand upon the Military Government of the United States in the Philippine Islands and of the defendant, the present City of Manila, for the payment of said sum so due as aforesaid, and the same has been successively refused and denied by said entity and still remains due and unpaid.

XV.

That the facts contained and recited in the pamphlet entitled, "Carriedo y sus obras" marked for identification, Plaintiff's Exhibit

"A," in so far as they are material and relevant, are deemed to be true.

23

XVI.

That the City of Manila at the present time and ever since the organization of said City on the 6th day of August, 1901, has been in possession of the water system known as the "Carriedo Water Works" and of the lands belonging and pertaining to said water works, and of ninety-four (94) shares of the capital stock of the Banco Español Filipino of the value of about 18,400 pesos Philippines Currency, which said shares of stock constituted a part of the Carriedo funds in the hands of the Ayuntamiento of Manila prior to August 13, 1898; that the dividends and income accruing to said shares have been received and collected at all times since the 6th day of August, 1901, by the defendant, the City of Manila. That said defendant, the City of Manila, has exclusive charge of the maintenance and operation of said water system, collects and receives the moneys due and payable for the consumption of the water supplied thereby and disburses the money necessary for salaries, supplies, repairs and improvements according to the terms and conditions of its Charter, Act 183 of the Philippines Commissions.

It is further agreed and stipulated by the parties through their respective attorneys as follows:—

A.

That on or about August 13, 1898, at the time of the suspension of the Ayuntamiento of Manila herein referred to, all funds and moneys pertaining to the said Ayuntamiento (including all moneys deposited with the said Ayuntamiento as security for the performance of contracts with said Ayuntamiento) and of the said Carriedo
24 Water Works were turned over to the Military Government of the Philippine Islands and covered into the general funds of the said Military Government called "Public Civil Funds," which said funds were disbursed upon General Order of the Military Government of the said Islands.

B.

That all taxes of the City of Manila and those corresponding to the Carriedo Water Works collected during the Military Government, were covered into the said "Public Civil Funds" and disbursed as aforesaid.

C.

That all moneys and funds pertaining to the said Public Civil Funds were, on or about September 1st, 1900, turned over to the Insular Treasurer of the Philippine Islands and disbursed pursuant to appropriation by the Philippines Civil Commission.

D.

That in the year 1884 said Carriedo Water Works were constructed at a cost of about 1,027,000 pesos; that of the said cost price said City of Manila, by means of raising a tax upon meat, pursuant to Royal Order of November — 1876, contributed a material portion.

E.

That since the construction of the said Water Works the Ayuntamiento has considered it necessary to make certain repairs, alterations and extensions in the said water works and has made the same.

25 That the moneys collected by the said Ayuntamiento as taxes for the use of said water by consumers, together with other incomes from the said Carriedo property, has been insufficient to pay for all of said repairs, alterations and extensions and that the deficit has been paid by the said Ayuntamiento of Manila.

F.

That the said Military Government in a like manner deemed it necessary and made said repairs, alterations and extensions of said system with the money raised as taxes upon the use of said water and proceeds from other sources pertaining to the said Carriedo being insufficient to meet said repairs, alterations and extensions, the deficit was supplied by the said Military Government by means of said tax on meat. That the said deficits for the years 1898, 1899, 1900, 1901 and 1902 amounted to about 34,000 pesos.

G.

That since August 6th, 1901, the City of Manila, through its Municipal Board, deemed it necessary to make further repairs, alterations and extensions of the said Water Works and that the taxes upon the consumers of the said water, together with the incomes of all properties of the said Water Works have been insufficient to meet the said expenses and that the said City, out of its common funds, has paid the difference for said repairs, alterations and extensions. That said deficit for the years 1903, 1904 to June 30, 1905, amounted to 9,205 pesos Philippine Currency.

H.

26 That the said tax upon meat collected pursuant to said Royal Order of November —, 1876, has been collected from said date up to and including July, 1902, when the same was repealed.

It is further agreed that up to the 13th day of August, 1898, the funds of the Carriedo Water Works were kept separate and distinct by the Ayuntamiento de Manila.

There was presented as evidence, and there appear attached to the record the following documents which form a part of the record herein:—

1. A pamphlet entitled "Carriedo y Sus Obras" as Exhibit "A" of the plaintiff.
2. A deposition of Carlos de las Heras, taken in the Justice of the Peace Court of Manila on May 22, 1903.
3. Annexes A, B and C of the record.
4. Exhibit "B" of the plaintiff, which is a document referring to the payment made to Tomas Muñoz for coal delivered in March, 1898.
5. Exhibit "C" of the plaintiff, which are certain papers referring to the delivery of coal by Tomas Luna Muñoz with a receipt for the amount thereof unpaid.

Daid agreed statement of facts and the original documents presented were all of the evidence presented or received in said cause.

EXHIBIT "A."

Carriedo and His Works.

Memorial of the pious works for the poor, and for a water system instituted by the worthy patrician, Don Francisco Carriedo y Peredo, and a chronicle of the festivals which the most excellent Ayuntamiento of the M. N. Y. S. L., City of Manila, in conjunction with its neighboring territory, has held to commemorate the inauguration of the first fountain of water supply. Written by resolution of the Municipal Corporation by Don Francisco Demas y Otzet, Manila, 1892.

* * * * *

Page 44. Nothing can place more evidently before the view of all the great nature of the charities of Carriedo than the two entrusted to the most excellent Ayuntamiento of this city, known commonly as the Work for the Poor and the Work of the Water System, because in them more than in any other is seen both the profound anxiety for good as well as the seal of perpetuity which gives them value.

Time, with its changes and rigors, brought Manila the sad year 1762—that year of wistful recollection in which the British arms took possession of the city, and in the tremendous upheaval of a foray riches and treasures of every kind disappeared in the hands of a wanton soldiery, for whom books and documents could only be prejudicial some day. In the tremendous disorder of that triumph without victory there were lost to history, among other thousand documents, the curious book which contained the foundation of both works, and if it were not for the fortunate memorial and the interest and civic love of another notable patrician, Don Fernando Gonzales Calderon, it would have been difficult if not impossible to reconstitute the historic origin of that which is today called The Hospicio de San Jose, and that which the people call the Carriedo Waterworks.

In a book bound in parchment there are preserved today the two institutions for which Manila owes the most gratitude

to the magnanimity of their founder, and to the exquisite zeal of their executor, the Municipal Corporation: and in that book, which deserves to be newly bound in covers of gold in order that time may make no impression upon its pages, and in order to honor its contents as it merits, is read the famous clause of the testament wherein is established the charitable work, together with the beginning and end of the last will of Carriedo, which, by authoritative order, the Marques de Montecastro y Llanahermosa exhibited on the 4th of September, 1764, by virtue of the petition made in the cabildo by the rigidor Don Andres del Barrio.

* * * * *

Page 47. The clauses of the testamentary memorial which the Marques de Montecastro made according to the will of Don Francisco Carriedo are known to all; but well known as they are, they will not be out of place in this chronicle, especially since in them is the best place to appreciate the degree to which the height of the sentiments which exalted him reached. The waterworks founded properly by Carriedo in 1734 is the institution which best displays his goodness and his foresight, his love and his patriotism, and that grand and sublime something which distinguishes him from other extraordinary men—something which involves ideas of universality and perpetuity, which were the soul of his intelligence. Reproduced they are as follows:—

“Testimentary Clauses of Carriedo.

“I declare that in the month of December of last year, 1733, I presented a writing to this city and community offering to
 29 set aside 10,000 pesos to conduct water from San Pedro Macati to this city by an aqueduct, under the terms and conditions which in said writing were set forth, which proposition was accepted in the cabildo on the 5th of November of said year, but various proceedings having been had in the matter the execution of the works referred to was suspended. And because it has always been my intention to contribute on my part to a work so acceptable in the eyes of God, by reason of the great good which may result in benefit of the poor, I request my executors that after I am dead and my estate is once gathered together, there be presented to said city and community a new writing insisting upon and referring to the first which I have presented, offering the setting apart of said 10,000 pesos under the same conditions, which it is my will are not to be altered nor changed in any manner, unless solely in the variation of the route whence the water may be easily brought in: that is to say: if it be more convenient or easy to bring the water from the river of Maybonga from the right bank until it is carried into Santa Cruz, closing the estero of San Juan del Monte and placing across it an aqueduct, and if accepted and agreed in this form, or in that which they find most convenient, they shall make the delivery of the said 10,000 pesos, and not otherwise.”

Testimentary Memorial of the Trustees (Fidei Comisario).

"By virtue of which, and having present the conditions imposed in the writing to which the quoted clause refers, in order that this our city and community may have a clear intelligence of said conditions, they are placed in the form and manner following:—

30 Firstly: it was the will of the said deceased that upon the delivery and receipt of the aforesaid sum of 10,000 pesos the same should be placed in a separate safe, with three keys which must be held by the Alcalde Rigidor, the senior business delegate (diputado del comercio), and the senior Rigidor of this city, so that the said money, together with what it may produce from investment or employment, must be duly separated, and as a fund apart from all of the other funds which are handled as income, or funds of this our city, and from the other funds which might be destined for expenses of its commerce, since in this manner this fund must be managed independently and apart from whatsoever others of those mentioned.

Item. That in no manner, either now or at any time, shall this fund or its products be touched, even though necessary and most urgent reasons therefor be offered. Neither shall anything be taken therefrom by way of loan or advance even though it be for the greatest necessities, nor even though there be given the promise to return the same under security or bonds, because in any one of the events mentioned and whenever the said money shall be touched it was the will of the said deceased that the charity should cease and should not continue for the purpose named, and in which case the money on hand and that which might be on investment must be withdrawn for other purposes provided for and communicated by the said deceased. Upon which point it was his will that the door be closed to this our city and its community, that this fund be devoted solely to this purpose under the conditions expressed. And for greater clearness and understanding of the foregoing clauses, that in 31 no case nor event, however grave and necessary, shall the said disposition be interpreted, arbitrated nor increased, but that the same must be fulfilled and carried out to the letter as it is set forth without any ambiguity for interpretation.

Item. That this our city and its community must provide and arbitrate the manner of increasing this fund as it may seem most convenient, either by way of giving it for return (á corresponder) to secure and guarantee to persons with the corresponding bonds, or by employing it for the account and at the risk of the fund as the circumstances may offer and as is believed most convenient for its greater increase.

Item. That in accordance with the increase of the funds with the earnings which it may produce from loans or employments, the investments must be increased proportionately in order that the said fund be increased up to the proper and necessary amount which it should reach according to the will of the deceased.

Item. Said *said* sum must be invested as aforesaid until it reaches

the sum of 30,000 pesos, and upon it being ascertained that the existing fund promises said sum, there must be invested in each year, by employment or by way of loan, 12,000 pesos, and the interest or earnings of this principal shall be applied to the works.

Item. That the 6,000 pesos left over from the 24,000 pesos which comprise the two investments of 12,000 pesos of the total of 30,000 pesos, which is the principal fund of the works, must remain on hand in the safe in order that with this reserve there can be made

32 good and compensated the loss which may occur, if by accident (May God avert the same) some ship may be lost, or the collection of any transaction may be obstructed or delayed in which one of the two investments may be involved.

Item. That the works shall be confined to an aqueduct of brick or stone, from which shall be placed pipes of earthenware or Chinese clay in order that the water may receive no contamination nor fail even when earthquakes may abuse the aqueduct, and that the pipes must commence precisely from the place and site which may seem most convenient and commodious for bringing the water, charging that it be recognized and admitted that this place shall be a point where the tidewater has not and shall not reach.

Item. That if it be deemed convenient and can be done with ease and without prejudice to the principal works, that there be manufactured at intervals some uncovered tanks where the water can repose, settle, and at the same time undergo the benefit of exposure to the sun so that in some degree it may arrive purified of the mould which it must receive in the pipes.

Item. That the said water shall be sought to be brought from the most convenient sites which are to be found in this vicinity, and from those of the greatest facility, in order that the benefit may be enjoyed at the least cost, for which purpose it must be endeavored to make exact and diligent explorations of the site or sites where the best and most conveniently conductable water may be, and in the event that it be not possible to obtain its conduction, or to commence the works with the interest or earnings which the 30,000 pesos may produce, the latter and the earnings of the principal of said

33 funds must be returned to carry out the proper purposes.

Item. If the desired end of conducting water to this city be attained there shall be placed therein three or four public fountains, and without the walls thereof such as may be deemed suitable and at the cost of said works water shall be conducted to the convents of San Francisco, San Juan de Dios, and to the monastery of Santa Clara.

That if any other convent, community house, or private house desires to enjoy this benefit it must be conceded to them upon the condition that they must contribute to the cost of the conduction in a sum which may be deemed proportionate, and of that which may be paid for this reason there shall be devoted to assist the works whatever part may be deemed proper and the remainder shall be at the disposal of the authorities of our city and community to increase in order that its income and products shall be devoted to the expenses occasioned by breaks in the works, and to pay suitable

salaries to the persons who may take care of said repairs and the maintenance and preservation of said works.

Item. That *in* the investments meet with good fortune and it be recognized from the state of the works that with 20,000 or 24,000 pesos it can be completed and placed in final perfection, in this case the investments shall cease and making a balance of all of the principal which exists, out of the 30,000 pesos sufficient shall be devoted for the completion of the works and the rest which remains on hand, whatever be the amount, shall be turned over to this our city to be placed on deposit on the condition that at a time when rice is cheap,

as much thereof shall be purchased and held to be given to the poor at cost price when through scarcity the same may be dear and advanced in price. And if the aforesaid sum which remains for this purpose should not be or is not considered to be sufficient to carry out the purpose the authorities of our city shall take steps to increase it until it arrives at a sufficient amount which may be enough to succor the hardships which are undergone during high markets, proportioning it according to the condition of the commonwealth.

Item. That *if* must be an exact and unalterable condition that the aforesaid sum or sums of money which are left for this purpose must be maintained precisely and necessarily on deposit in order that the necessary and suitable purchases of rice can be punctually made in order that at a time when a high price of this commodity prevails the price thereof may be regulated moderately in order that the alteration or excess in such price may never be felt, and to that end in no manner and for no reason and on no grounds, even though they be of the greatest urgency, shall the money of this deposit be touched or diverted to any other purpose, neither to loan the same nor to advance it even under bonds obligating its return, because in the event that this is done it was the will of the deceased that this sum be returned with its earnings to be employed in other purposes.

Item. That the conditions aforesaid shall not be restricted, interpreted or altered, but shall be carried out, fulfilled and executed as hereinabove set forth.

In Witness Whereof I set my hand hereto at Manila."

* * * * *

Page 54. Following step by step the exploitation of the idea when a few years after the setting aside by the executor, Marques de Montecastro y Villahermosa, of the 4,000 pesos donated for the work of the poor, as well as the 10,000 pesos delivered for the water supply, the same commenced to bear fruit, serving at the same time in the development of commerce, which, although limited, this city maintained with New Spain, there occurred the English invasion and the sacking of this city by the soldiers of Great Britain. It is far from our mind to lay any charge against those who were the effective cause of such great losses and of so much ravage. War, whether just or unjust, bears with it inevitable evils, and one of others was the disappearance of books and documents concerning the works of Carriedo, and worse still the disappearance of a great part of the funds which were to be found in the vaults of

the municipality; inasmuch as upon a liquidation after another noted patrician reconquered for Spain the Philippine Insular Empire, it resulted that of the first sum there could be saved only 2,472 pesos and 3 reales, the amount of the maritime investment granted in 1761 to Don Vicente Memije, and of the second 9,551 pesos and 6 reales, the amount of the principal and interest which had been given by draft upon various places.

Such adversities in others perhaps would have been sufficient to cool enthusiasm, and from loss to loss, and misfortune to misfortune, to reach the absolute and complete disappearance of both funds, but the noble establishment which was imbued with the very idea, which it had made its own, and which contemplated the immense benefits which would be secured for future times when the increase in
 36 the population would make the Walled City and its suburbs one of the leading capitals of the Orient, turned with new zeal to labor upon both works, reconstituting the curious book the honor and glory of that municipality worthy of a laurel page in the book of history, and increasing the rescued funds by devoting them to new drafts and loans.

But it was written that the works of Carriedo, like everything good, had to be persecuted and crossed, and so it was that on the part of his heirs, represented by Don Francisco David, a civil suit was commenced against the noble city praying for the delivery of the 10,000 of the waterworks with the earnings thereof. The Ayuntamiento of Manila, firm in its right, maintained the same in the courts and obtained a favorable verdict in the first instance, but the heirs of Carriedo, having appealed, the Real Sala de lo Civil, by judgment of January 22, 1789, ordered that the said 10,000 pesos, with its earnings, be returned to the mass of the estate of said Carriedo, and this judgment was confirmed in the rehearing on May 16th of said year, as appears in the book of judgments of this appellate court, which we have examined.

Could the Ayuntamiento abandon the defense of its rights, in which was involved the future life and the splendid prospects of this capital? By no means. And therefore carrying up the decision of the Real Audiencia before the Supreme Counsel of the Indies on the 24th of January, 1792, it had the immense satisfaction of again collecting that fund, which it delivered under bond with books, documents and accounts in 1789, under and by virtue of the decree of the Real Ejutoria of January 24, 1792, and once more it
 37 commenced with new zeal to augment the same in order to merit the confidence reposed therein by the generous founder.

When the funds of the charitable institutions reached the sum of 34,205 pesos at the beginning of the present century, it was necessary to furnish the Royal Hacienda (Royal Exchequer) with 17,705 pesos by virtue of authoritative and inevitable orders to attend to peremptory necessities, a setback which did not fail to effect the natural increase of these funds.

The year 1806 arrived and there was created in this capital a Board of Consolidacion de Vales Reales, which requested the Ayuntamiento to make delivery of the funds of both charitable works of

Carriedo with the books and accounts of their administration. Prolix and fine at once would it be to set forth here the tenacious combat which the noble establishment maintained against that board in order not to render accounts, nor deliver the funds, which it understood it was not called upon to turn over to its control. Notwithstanding the pressure with which the imperious ward met its demands, a year and a half was necessary before the Ayuntamiento determined, by a harsh law of the strongest kind, to comply with what was ordered, and thus it was that in consequence of the order which the Royal Board directed to the municipal corporation, with a fixed period of eight non-extendable days, the latter resolved to render its account and turn over the money which was on hand in the treasury to the Royal vaults, a statement of which had been furnished to the King and that which existed in credits, all of which was accomplished in the cabildo of March 28, 1808.

38 The municipality, as the executor of the great Carriedo in this matter, could not admit itself defeated, and therefore it was that it respectfully carried up its protest to the sovereign and finally reason and justice triumphing, the same Royal Board of Consolidacion de Vales Reales returned the funds of both charitable works to their legitimate administrator, giving account of this refund in the cabildo of May 20, 1809, and making delivery of the moneys the following 5th day of June.

Let us now see the liquidation made on May 27th, 1908, in the books of the respective works:

Account of the works of the water supply:

	Pesos.	Rs.	Cts.
In cash	8364-	6-	2
Advanced to Royal Exchequer.....	16705	0	0
Bills Receivable	3066	6	7
Estate of Jose Garcia.....	1050-	7-	6
Estate of Luis Varela.....	3000-	0-	0
	<hr/>	4050	7 6
Total fund on hand on said date.....	32187-	4-	7

* * * * *

Page 58. All of the attention of the municipality being devoted to the development of the fund for the waterworks, the latter was not long in reaching a respectable sum, thanks to the premium rendered by the capital dedicated to maritime risks, and the good fortune of the ventures, and more than once it was intended to consider the business closed and carry out the thought, but when investigations were made upon the land, a work of permanent character with the sum on hand was seen to be almost impossible, and on the other hand neither the abundance nor the quality of the springs sufficed for the necessities of the time or those which the noted patricians foresaw for a time not far distant in view of the fabulous growth of the population. Who would not wish to unite his name to the name

39 of Carriedo in the immense work of satisfying for always the first and most important of the necessities of a community? It was greatly meritorious on the part of those corporations to deprive themselves of such glory and to take care solely of increasing the capital and to secure the sum by good mortgages when the circumstances of the times no longer permitted giving it out on maritime risks, thus carrying out the intention of the founder. And let us set forth here the merit acquired in 1859 by Rigidor Don Baltasar Giraudier, to whom is due the fact that possibly large sums were not lost, thanks to the interest and affection with which he looked upon this excellent charity. Finally there arrived the time of the illustrious General Gandara, an epoch in which Sr. Giraudier also figures in the municipality, and taking charge of the situation he again agitated the question of the Carriedo funds, presenting voluminous reports by the Rigidors Messrs. Ynchausti and Balbas, and thenceforward the properties began to be realized upon and the funds to be made whole and secure by being placed in the caja de depositos. The condition and importance thereof when that most worthy authority framed his most noble intention to carry out the work of the water supply assuring sure earnings to the capital although they were more modest, was on the 23rd of July, 1867, as follows:

Capital on hand on said date.....	Ps. 177,853.44
In shares of the Banco Español Filipino of Isabela 2nd.....	12,600.00
In Caja de Depositos at interest upon the various deposit certificates of 5300, 6200, 2000, 2000, 2500, 3900.....	21,900.00
In possession of various persons upon mortgage of property in this city....	143,353.44

* * * * *

40 Page 59. Finally, in the said year 1867, it was decided to confer upon Don Genaro de Palacios y Guerra the charge of studying the project for the conduction of the water, and this honorable mission having been accepted in the month of December, 1869, he presented a complete plan according to the Roman system, whose estimate in its two divisions of conduction and distribution amounted to 12,250,000 Pesetas, a sum which the collected funds could not defray. In spite of the grandeur of the project and of the greater necessities which it satisfied, inasmuch as the actual necessities were not so great it was determined to take the same idea as a basis and to draft another project utilizing the power of elevating pumps, and this plan, also presented with the greatest promptness to the corporation, was approved although the cost of the works was much more than the sum attained by the capital of Carriedo on this date.

The estimate approved amounting to 745,509 Pesos, how was the works to be carried out with the promptness which the necessities of the population required? The Ayuntamiento burned with a de-

sire to do, but in its poverty it could not as in the works of the poor advance an adequate sum, nor perform with the funds of Carriedo the miracle of the loaves and the fishes, but passing upon the means of giving it a prompt solution of the problem, the distinguished Rigidors Marcelo Ramirez and Quintia Meynet suggested the idea of a tax upon meat, and this happy thought, supported by the corregidor and the civil governor, most excellent Sr. Don Jose Diaz, seconded by the most worthy General Rafael de Izquierdo, of whom

41 these provinces preserve so fine a memory, and sanctioned by the government of His Majesty, was like the benediction of God poured upon the charity of his creatures. The providential hand which realized what could not and should not be lost in the regions of the ideal, as so often occurs unfortunately in human works. But it is seen and proved that all that commences in the name of God, in the name of God finds a happy ending, and so Carriedo, as well as the Ayuntamiento of Manila, invoked this august name upon launching their most noble attempts.

Besides the approval by His Majesty of the tax upon meat to carry out at once to a successful conclusion the desired works, it was ordered by Royal Order of January 26, 1886, that the sum of 100,000 pesos should be contributed thereto from the funds of local branches, but the Ayuntamiento of Manila taking its stand according to its high mission, and imbued with the idea of Carriedo and of its proper duty, believed that to accept such aid would essentially change the nature of the works, and therefore it respectfully declined this class of donation, calculating that in the time which should be employed until the completion of the works the natural increases of the said funds and the amount of the tax would be more than sufficient to cover all of the expenses. In this worthy resolution of the Municipal Cabildo, which the supreme government approved, may be seen the absolute conformity of ideas with its predecessors and with the immortal founder, since in any other manner it would have been necessary to divide up a glory which ought to remain, as in fact it has remained, intact and undivided for the two sole entities which had the right thereto, whatever might be the time necessary for properly securing it.

In good time there arrived to discharge the duties of government over these Oceanic provinces the worthy conqueror of Orogue, 42 Lieutenant General Domingo Moriones y Murillo. His love of order, his unbreakable rectitude and fairness of character, and an intimate and great predilection to good generous impulse to progress as he saw it wherever it should be manifested, caused him not to rest a moment from the time that he placed his foot upon the royal landing on the levee of Magallanes until all of the needs having been sounded with his eagle's glance, he bore all the energy of his febrile activity and all the force of his intelligence to the most insignificant of the weals of administrative organization. He applied himself to the question of conduction of water and lending with his sanction moral importance and material force to the watchfulness of the Ayuntamiento, the memorable 23rd of January, 1878, arrived, when, with great festivities and public re-

joining, the idea of Carriedo received, so to speak, with all solemnity the august waters of baptism. Let us see the minutes No. 4 of the 12th day of January, of that year, which are hereinafter inserted as a document which places the seal upon the grandeur with which the Ayuntamiento of Manila commenced the note ended upon the last stage of the honorable trust confided to its rectitude and intelligence. Nothing speaks the language of truth like deeds. The most politic phrases lack meaning in the face of the justification of deeds themselves, and therefore it is that we leave the official document to proclaim the panegyric of the illustrious citizens who in that year formed the municipal corporation.

Act No. 4 of January 12th: "In the Government House of the City of Manila, temporarily quartered in the building No. 6 of Calle Real, on January 12, 1878, assembled under the President, 43 Don Jose Morales Ramirez, Corregidor, Vice President, the members of the municipal corporation who are named in the margin, have held an extraordinary cabildo before me, the chief scribe and secretary of said corporation. Messrs. Corregidor and Rigidores Cavada, Puig y Llagestera, Muñoz, Michel, Marzano.

* * *

The competitive bidding having been terminated, account was given of a communication from the General Directorate of Civil Administration, dated the 11th instant, of the following tenor:—

The Most Excellent Governor General on this date has decreed the following:—It appearing that by Royal Order of the 26th of January, of the year last past, it was declared that the works for the supply of water to the City of Manila and surrounding suburbs had lost its municipal character from the moment when the funds of the local branches had to contribute 100,000 pesos for the execution of said works, and it appearing that the Ayuntamiento of Manila, in a communication directed to the General Government under date of December 28th, of the year last past, renounces the donation of 100,000 pesos belonging to the funds of the local branches, and asks that the effects of the Royal Order of January 26th be suspended inasmuch as they are based solely and exclusively upon the aid which is now renounced, and whereas the Municipal Corporation has a perfect right to make renunciation of the 100,000 pesos since this administrative entity is more interested than any other in the matter referred to, and is the most competent to know and judge of the necessities of its administration, and whereas the estimates based upon the economical budget approved by Royal Order of the 17th 44 of November, of 1876, has for its principal basis the period of three years in which time it is expected that the works shall be completed, which is impossible in view of the insufficiency of the official and private elements existing in this country for the execution with such rapidity of works of this magnitude.

And whereas in the execution of these works five or six years will be ample, at least according to the opinions of the administrator and of the persons of greatest understanding in this class of affairs, and in view of this fact, which the future will make patent, the calculations made in the economical budget will necessarily be fundamen-

tally modified, and the funds destined for the work will be increased by virtue thereof in a sum much greater than the 100,000 renounced, and whereas by acceding to the desires of the municipal corporation, the funds of the local branches will not be despoiled of the sum of 100,000 pesos, which are so necessary for the many other needs of the administration, and that the circumstance of said funds in favor of this service may and should be reduced to the making of the returnable advances necessary for its regular and prompt execution, and having read the report issued unanimously by the Board of Authorities and the report furnished by the General Directorate of Civil Administration, this General Government, in conformity with the reports, decrees as follows:—

First. The effects of the dispositive part of the order of January 26th of last year are suspended, with the exception of Paragraph 3. An account should be given to the government of His Majesty of this resolution, and a consultation in due time be had concerning whether the bids for the commodities which must be purchased by you should be made by the Ministerio de Ultramar, as is provided in the decree of May 5, 1876, or by the Ayuntamiento of Manila, or simultaneously in Madrid and in this city, and before the two administrative bodies aforesaid.

Second. In conformity with the proposal of the General Directorate of Civil Administration and in accordance with the desires of the municipal corporation the works will be inaugurated on the day of His Majesty the king, Don Alfonso the XII.

Third. Return this matter to the Directorate of Civil Administration for its due and prompt fulfillment.

All of which I have the pleasure to subscribe to you with the inclosure of a copy of the report issued by this General Directorate in the matter referred to, for your information and the corresponding effects.'

When the Ayuntamiento was informed of the foregoing communication it resolved that for the inauguration of the works of conducting the water it was necessary that a site be fixed where said act should take place, and to this end was called Don Genero Palacios, the author of the technical plans, and when this gentleman appeared it was resolved that the most suitable place to place the first stone of the work of water conduction was the terminus of Calle Alix at the center of the junction of Calles Avilez, Nagtajan and Mariquina, and therefore it was so determined and a commission was named composed of Messrs. Corregidor, Rigidor Jose Reyes and the city engineer, Genero Palacios, to take charge of the construction of a kiosk and the decoration of that site for the ceremony of the inauguration of the works of water conduction, which should take place on the 23rd instant, the day of His Majesty the king, Don Alfonso XII, at 7 o'clock in the morning. It was also determined that the aqueduct of the important waterworks be called the aqueduct of Alfonso XII, and one of the ornamental fountains which should be located in the city at the place believed most suitable be called the 'Fountain of Thanks.'

Page 69. The worthy successor of Carriedo, fortunate in the selection of Sr. Palacios, aiding him with zeal in his undertakings, brought to pass that the works which demanded not less than six years of work were realized in less than four, and that by carefully attending thereto there was invested in them much less capital than that estimated.

* * * * *

47 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RICARDO AGUADO, Plaintiff and Appellee,
vs.
CITY OF MANILA, Defendant and Appellant.

Stipulation.

It is hereby stipulated and agreed by and between the undersigned counsel for and on behalf of the respective parties in the above entitled cause, that the foregoing translation of extracts from the work known as "Carriedo y sus obras," introduced as evidence at the trial of the above entitled cause and appearing of record therein as "Exhibit A," are true and correct translations of said extracts, and that the same constitute the material pertinent portions of said "Exhibit A," truly and properly describing the nature, origin and history of the funds known as the "Carriedo funds," and that said translations of said extracts shall be included in the record of said cause on appeal to the Supreme Court of the United States in lieu and stead of the said "Exhibit A."

Dated at Manila, P. I., 28 day of June, 1908.

HAUSSERMANN & COHN,
Attorneys for Plaintiff and Appellee.
MODESTO REYES,
Attorney for Defendant and Appellant.

48 2. *Deposition of Carlos de las Heras.*

In the Justice of the Peace Court of the City of Manila on the 22nd day of May, 1903, before the Justice of the Peace appeared Alberto Barretto as attorney for Ricardo Aguado, and Don Carlos de las Heras, without any appearance on the part of the City of Manila, notwithstanding the citation of the latter for the purpose of taking the deposition of the aforesaid Don Carlos de las Heras.

Thereupon attorney Alberto Barretto, so appearing, directed to the witness, CARLOS DE LAS HERAS, the following questions after the latter had been duly sworn and had exhibited his personal cedula No. 123414, issued on the 11th of April last by the City Assessor and Collector of this City:

Q. What is your name?

A. Carlos de las Heras.

Q. What is your occupation?

A. I am one of the managers of the Compania General de Tabacas de Filipinas.

Q. Where is your domicile?

A. Calle del Marques de Comillas No. 27.

Q. Have you been the directing engineer of the Carriedo system of water supply of this city?

A. Yes.

49 Q. From when to when?

A. From 1895 to August 13, 1898.

Q. Were you in charge of the supplies and contracts of said department?

A. Yes; of all of the technical part.

Q. Do you know whether in the month of May, 1897, there was a contract for coal for supplying the pumping plants of Santolan?

A. Yes: a contract for 1600 tons of Australian coal.

Q. Why and for what was this contract?

A. For fuel for the boilers of the steam pumps which pumped the water from San Mateo River at Santolan into the Carriedo aqueduct.

Q. What participation did you have in this contract?

A. That corresponding to the directing engineer of the water supply, which consisted in inspecting the fuel and certifying the monthly deliveries thereof for payment at the administrative offices of the municipality.

Q. Do you know this document which is exhibited, marked with the letter "A"?

A. Yes, it is a certificate of the balance which remained unpaid in the coal bunkers at Santolan when that place was occupied on the 30th of June, 1898, by the force which garrisoned there and for the contractor. Said fuel had been supplied administratively by Don Ricardo at the price (then) of P15 after the contract had been fulfilled.

Q. Do you recognize the signature which appears at the foot of this document as yours?

A. Yes sir.

Q. Do you know this document which is exhibited, marked with the letter "B"?

A. Yes sir: it is the last appraised statement which was issued to the contractor, Tomas L. Muñoz, for his approval, prior to issuing the corresponding certificate.

Q. For what purpose did you issue this document?

A. In order to remit a copy thereof attached to the monthly

certificate with a communication directed to the mayor's office of the Ayuntamiento, which made the payment.

Q. Do you recognize this document which is exhibited, marked with the letter "C"?

50 A. Yes: it is a copy of the résumé of the certificates issued, which should appear attached to the liquidation of the fulfillment in the record of the contract.

Q. The final paragraph under the heading "Amount which remains to pay to the contractor" signifies that that amount should be paid wholly to the contractor, or is it a liquidation of the amount estimated?

A. It is simply a showing of having issued by the departmental offices the total of the monthly certificates whose detail appears upon the back, and that, therefore, the services contracted for have been fulfilled in accordance with the conditions of the contract, and that the amount of coal covered by said contract has been wholly received. It is the duty of the accounting offices to pay the sums set forth in the said certificates and résumé. The amounts paid to the contractor can only be arrived at from the receipts for these have been collected in full.

Q. Can you say by inspection of this document marked "C" when the contract was finished and fully completed by the contractor?

A. It is without doubt the end of the month of April.

Q. Do you know from what funds was paid the service rendered by virtue of this contract?

A. Like all the services for the water supply, it was charged to the Carriedo Funds.

Whereupon this deposition was declared closed and the witness signed the same, together with the attorney Alberto Barretto, after the foregoing had been read to them: to all of which I, the undersigned Justice of the Peace, certify and sign with the seal of this court.

C. DE LAS HERAS.

ALBERTO BARRETTO,

Attorney for the Plaintiff, Ricardo Aguado.

JOSE N. QUINTERO,
Justice of the Peace.

51

"DOCUMENT A."

Don Carlos de las Heras, Directing Engineer of the Water Supply:

I certify that according to advices from the first machinist of the Water Supply on the 30th of last June, upon abandoning the establishment at Santolan, there were on hand as received into the bunkers 39 tons of Australian coal, which Don Ricardo Aguado supplied administratively for the use of the pumping plant at the price of 15 pesos per ton.

And the amount thereof not having been paid, I issue the present at the instance of the interested party at Manila on the 8th of July, 1898.

(S'g'd)

CARLOS DE LAS HERAS.

4. EXHIBIT B.

"Document B."

Water Supply of Manila, Departmental Office.

Month of April, 1898.

Statement of Appraisal No. 11 of the Supply of Coal for the Plant
at Santolan During the Aforesaid Month in Accordance with the
Estimate.

Estimate approved for said service by the Most Excellent
Ayuntamiento on the 22nd of March, 1897, 19,200 pesos.

	Price per unit, pesos.	Partial amount, pesos.
Service carried out during the month 259,700 metric tons of Australian coal placed in the bunkers of Santolan.....	12	3116.40
Total		3116.40

Résumé.

Amount of the service carried out during the month....	3116.40
do do do in the previous months	16083.60
Total amount of the service up to date.....	19200.00
Total estimate in force on this date.....	19200.00
Balance to complete.....	0000.00

Manila, April 26, 1898.

First Machinist, ARTURO STEFFAN.

Ratified.

Contractor, TOMÁS L. MUÑOZ.

53

5. EXHIBIT "C."

"Document C."

Water Supply of Manila.
Departmental Office.

No. —.

Supply of 1600 tons of fuel for the pumping plant.

Contract awarded on April 26, 1897.

Contractor, Tomas L. Muñoz.

Résumé for the Liquidation of the Service.

AMOUNTS.					
Of the contract.	Reduction— In the competitive bidding.	Of the amount of the award.	Of the supply.	Of the certificates issued.	Amount which remains to pay unto the contractor.
<i>Pesos.</i>	<i>Pesos.</i>	<i>Pesos.</i>	<i>Pesos.</i>	<i>Pesos.</i>	<i>Pesos.</i>
19200	000 00	00 00	19200	19200	000 00

Manila, 28th of May, 1898.

CARLOS DE LAS HERAS.

Approved:

The Contractor.

TOMAS L. MUÑOZ.

54

EXHIBIT "C"—Continued.

Résumé of the Certificates Issued.

AMOUNT OF FUEL.—						
Date.		Placed in bunkers.	Placed in San Juan Del Monte.	Price per unit.	Total value.	Total amount paid.
		<i>Tons.</i>	<i>Tons.</i>	<i>Pesos.</i>	<i>Pesos.</i>	<i>Pesos.</i>
May, 1897.....		283.000	.....	12.00	3396.00	3396 00
July, ".....		70.800	.....	"	849.60	849 60
August, ".....		125.000	.....	"	1500.00	...
		200.000	.....	10.00	2000.00	3500 00
September, ".....		.....	147.000	2.00	294.00	294 00
October, ".....		.....	53.000	"	106.00	...
		38.000	.....	12.00	456.00	562 00
November, ".....		121.000	.....	"	1452.00	1452 00
December, ".....		105.000	.....	"	1260.00	1260 00
January, 1898.....		61.000	.....	"	732.00	732 00
		100.000	.....	10.00	1000.00	1000 00
February, ".....		39.000	.....	"	390.00	...
		.....	123.000	2.00	246.00	636 00
March, ".....		197.500	.....	12.00	2370.00	...
		.....	16.000	2.00	32.00	2402 00
April, ".....		259.700	.....	12.00	3116.40	3116 40
		1,600.000	339.000	.....	19200.00	19200 00

Manila, 28th of May, 1898.

CARLOS DE LOS HERAS.

A true copy.

ROBERT S. DIECK,

Superintendent of Water Supply and Sewers.

55

3. ANNEX B.

1st. Simple copy of the contract for the supply, of 1600 tons metric of Australian coal for the use of the pumping plant of the water supply service at Santolan, by Tomas Luna Muñoz Mercado executed in favor of the most excellent Ayuntamiento of this city. No. 416. In Manila, at the Government offices this 11th day of June, 1897, before me, Don Enrique Barrera y Caldes, doctor of civil and canonical law, notary public of the illustrious notarial college of Manila, residing and domiciled in this city, appears Don Tomas Luna Muñoz Mercado, a scribe, over the age of majority, married, and a resident of this city, with current personal cedula of the 6th class No. 99842, issued by the Administration of Public Exchequer of this province.

56 And having in my judgment the necessary legal capacity to execute this document, nothing to the contrary appearing to me, he freely and voluntarily states:

First. That informed by the Gazette No. 94 of the issue of the 4th day of April, last, that on the 12th day of the said month at 10 o'clock A. M., there will be let at public auction a supply of 1600 tons of rock coal, preferably that of the Philippine Islands, or, in default thereof, of Australian origin, for the purpose of the supply of the pumping plant of the water supply service in this city, upon the basis of 12 pesos per metric ton for Australian coal, in descending progression, before the Board of Auction of the most excellent Ayuntamiento of this city, and upon the arrival of said day and hour indicated he, the said party, presented a written offer accompanying the same with the due receipt of provisional deposit exacted from bidders, in which bid he offered to take in his charge said supply for the sum of 12 pesos for each metric ton of Australian coal, and with and under a strict submission to the said departmental and administrative conditions by which must be controlled not only the said auction but also the supply of 1600 tons of coal, and the offer of him, the said party, being the only one presented, as well as the best, the award was adjudicated in his favor for the sum of 12 pesos for each metric ton of Australian coal, subject, however, to the approval of the most excellent Ayuntamiento, and having been subsequently approved by said most excellent corporation in ordinary session held on the 26th day of April, last, as appears from certificates of the minutes of the auction and session referred to, respectively, which appear attached to the record thereof, all of which

57 has been displayed to me for the purpose of drafting the present document, and which minutes literally copied are of the following tenor:—

“Don Bernardino Marzano y Puig, Senior Clerk Rigidor, and secretary of the most excellent Ayuntamiento of this M. N. — & S. L. city of Manila (in the margin) Messrs. Alcalde President Valle, rigidores Gomez, Perez, Marzano, sect'y, Witnesseth:

That in the book of minutes of Carriedo corresponding to the current year, and in a session held by the Board of Auction on yes-

terday in the presence of the members who are mentioned in the margin, appears, among others, a resolution of the following tenor:—

'Account having been given of the proceedings had for contracting in the public auction for the supply of 1600 tons metric of rock coal for the use of the pumping plant of the water supply, the said auction was announced by the crier in the customary form, and there was presented a sealed bid, which was marked with the number 1, the bidder accompanying the same, in a separate cover, with the necessary document to bid and his personal cedula. The hour indicated for the bidding having passed and no further offers being presented, the opening of the bid filed was proceeded with and it resulted that Don Tomas Luna Muñoz, a resident of Binondo, informed of the public announcement in the Gazette of Manila for the contracting of the supply of 1600 metric tons of rock coal, preferably that of the Philippine Islands, and, likewise, informed of the conditions of the auction, the set of general departmental and economic conditions which must govern the contract, he obligated himself to accept the same for his account, subject entirely to the said

58 conditions, for the sum of 12 pesos per metric ton of Australian coal. The offer presented being acceptable it was resolved to adjudicate the award to the said Tomas Luna Muñoz for the offered sum of 12 pesos per metric ton of Australian coal, subject, however, to the approval of the most excellent Ayuntamiento, and the said Tomas Luna Muñoz thereupon endorsed in favor of the most excellent Ayuntamiento the document of the deposit to bid, amounting to the sum of 384 pesos, deposited in the treasury of said corporation.'

The foregoing agrees with its original, to the whole of which I refer, and for the purpose of annexing the same to the corresponding record I issue the present in Manila on April 13, 1897. Bernardino Marzano. There is a rubric."

"The office of the secretary of the most excellent Ayuntamiento of this M. N. Y. & S. L. city of Manila, Witnesseth:—

That in the book of minutes of said corporation corresponding to the present year, and in regular session of Carriedo, held on the 26th day of the present month, there appears amongst others a resolution of the following tenor:—

'Account was given of the proceedings had for contracting at auction for the supply of 1600 tons of coal for the use of the pumping plant of Santolan, together with a certificate of the minutes of the award of said services made in favor of Tomas Luna Muñoz: The municipality having been informed of these proceedings resolved to approve the said award.'

The foregoing agrees with its original, to the whole of which I refer, and in order that it be annexed to the corresponding record I issue the present in Manila on the 27th day of April, 1897. Bernardino Marzano. There is a rubric."

The foregoing inserts agree literally with their respective originals, to which I refer.

59 Second. That in compliance with the order of the most illustrious Senior Alcalde (acting) of this city in a decree

dated May 20th, last, the said appearing party has deposited in the treasury of the most excellent Ayuntamiento of this city at the disposition of the said most excellent corporation, as final security to guarantee the fulfillment of his obligation, the sum of 1,920 pesos, as appears from the corresponding receipt, which likewise appears annexed to the corresponding record, a copy of which is of the following tenor:—

“Treasury of the most excellent Ayuntamiento of Manila. Treasury operations — guarantys received—appropriations og 189— to 9— No. 2—First section — chapter — article — Don Pompilio Jorge Treasurer of the most excellent Ayuntamiento of this M. N. Y. & S. L. city of Manila. I have received of Tomas Luna Muñoz the sum of 1,920 pesos, being the amount equal to 10 per cent of the sum bid for 1600 metric tons of Australian coal for the use of the pumping plant in Santolan as final guaranty of said contract, and of this receipt note must be taken in the corresponding accounting department of this branch without which requisite it shall be null and of no force or effect. Manila, June 1st, 1897, Pompilio Jorge. There is a rubric. Total 1920 pesos — cents. I have taken note, the accountant Adriano de Goroztiza. There is another rubric. Entered in the account books at No. 2. There is a rubric. Entered in the treasury at No. 2. There is a rubric.”

The foregoing insert agrees literally with its original, to which I refer.

Third. That the said contract having been awarded and the final guaranty to which the foregoing paragraph refers having been given, the said appearing party sufficiently informed
60 of the requisites and obligations under which the said contract has been awarded to him, executes the present document, and by virtue thereof solemnly covenants: that he obligates himself and promises to take in his charge the contract to supply 1600 metric tons of Australian rock coal for the said sum of 12 pesos for each metric ton of Australian coal, with and under a strict subjection to the set of departmental and administrative conditions which served as basis for the competitive bidding referred to, and which must control in the supply of said 1600 tons of coal, which said conditions appear likewise annexed to the corresponding record, and which, literally copied, are of the following tenor:

“Set of departmental conditions which in addition to those approved by Royal Order of June 11, 1886, must be observed in the supply of 1600 tons of coal for the pumping plant of the water service. Art. 1. Obligations of the contractor: The contractor obligates himself to place in the coal bunkers of the pumping station of Santolan 1600 metric tons of mineral coal in the terms which this set of conditions prescribed, and at the prices which are established therein. Art. 2. Grade of fuel: (a) Preferred coal shall be in accordance with decree of the general government of August 25, 1893, that of Philippine origin, which may have as a minimum the caloric efficiency of coal from the island of Cebu, tested in the general inspection of mines, and shall be clean and pure of compact texture without pyrites nor earthy substances, and in general shall

be free of all foreign body, shall burn with a long and red flame without slagging upon the furnace bars, and shall not leave residues

whose weight shall exceed 12%; (b) likewise there will be

61 accepted, in default of the foregoing, Australian coal of known origin, which shall be accredited by the contractor

by means of a certificate of the importer. This fuel, in addition to uniting the conditions already indicated, shall not leave residues whose weight shall exceed 10% of the amount which is burned in the test. Art. 3. Form in which the supply must be made: The

fuel shall be supplied in lumps of variable size, admitting fine coal and even coal dust provided that the amount of the latter shall not exceed 5% of the whole, and if it should exceed this limit upon receipt the coal shall be passe-through a screen with openings of one centimeter and of that which passes through the screen 5% shall be admitted and the balance rejected. Art. 4. Manner of receiving the fuel: The partial deliveries shall be made to the store-

keeper of Santolan, the coal being weighed on the scale of the coal bunkers without prejudice to the final receipt which shall be made by the engineer in accordance with the results of the tests which the first machinist of the waterworks shall make. Art. 5. Tests:

These shall be made in the presence of the contractor, if he so desires, by burning the amounts of fuel necessary to verify the conditions exacted. The coal which does not display these conditions in the judgment of the engineer shall be rejected and the same shall be withdrawn and substituted by other suitable coal within the period of 15 days. Art. 6. Means of transportation: The transportation

shall be made in cascos from Manila to the esplanade which exists close by the bridge over the estero of San Juan del Monte, and in carts from said esplanade to the coal bunkers of Santolan, for which there shall be supplied to the contractor the said carts which the

water supply has available, the animals and drivers being for

62 the account of the contractor. Art. 7. Responsibility for damages: There shall be chargeable to the account of the

contractor the payment of indemnities as well as of damages which may be occasioned in public or private domain by temporary occupation or by any other cause in all of the acts which are in his charge in accordance with these specifications. Art. 8. Prices which

must be paid for the fuel: (a) The Australian coal which is accepted shall be paid for at the price of 12 pesos per metric ton placed in the coal bunkers; (b) The Philippine coal shall be paid for at an

equivalent price which shall be determined by tests requested of the General Inspection of Mines, in which tests there shall be taken into account the relative caloric efficiency of both fuels. Art. 9.

Manner of paying for the fuel supplied: Prior to the 15th day of each month there shall be drawn a statement with values of the amount of coal which has already been received in the past in accordance with which the engineer will issue a certificate for the

payment, setting forth therein the conformity of the contractor, to whom it shall be transmitted for this purpose. Likewise there may be anticipated upon estimate and at the price of 10 pesos per ton the value of the fuel placed in the landing of the estero of San Juan

del Monte if the contractor so requests, but his responsibility shall continue as to the weight and other conditions until the said fuel shall be received in the bunkers of Santolan. Art. 10. Transmission of certificates: The monthly certificate should be transmitted to the Alcalde's office within the month following that on which the deliveries which they cover have been made. Art. 11. Decision of

contractor's claims: The directing engineer of the water service shall likewise transmit the claims which the contractor may have made in the event that he does not agree therewith, and shall accompany the same with his report in order that the most excellent Ayuntamiento may make final determination thereof. Art. 12. Period for the completion and the minimum quantities of supply: The supply shall be completed in the period of one year from the date for commencing the same designated in the administrative conditions. The monthly deliveries must be of 130 tons at least, it being understood that the deliveries can be omitted in the months that the land transportation is not convenient for the contractor if the latter places in the coal bunkers in advance the fuel corresponding to said months.

Final Receipt. Art. 13. The receipt shall be sole and final being made when the supply is once terminated. Art. 14. Obligation of the contractor in cases not specified: (a) It is the obligation of the contractor to do whatever may be necessary for the good order of the supply even when it is not expressly stipulated in these conditions, provided that without departing from the spirit and proper interpretation the engineer so orders in writing, reserving the right to the contractor to make a corresponding complaint before the Alcalde within the period of ten days following the receipt of the order; (b) He shall also be obligated to transport in the carts which carry the fuel to Santolan the stones collected at the latter point for the preservation of the road at the rate of one-half cubic meter per return trip of said carts, leaving the same at the point of the road which may be designated between the pump house and the landing. Art. 15. Documents which the contractor can claim: (a) The contractor

in accordance with the provisions of Art. 5 and 8 of the set of general conditions can make at his expense, but within the office of the engineer only, copies of the documents which form part of the contract, whose originals shall be furnished him by the engineer, who will certify the copies with his signature if the contractor so desires; (b) He shall also have the right to make copies of statements with values which are made up monthly and of the certificates issued. Art. 16. Observation concerning the official correspondence of the engineer and the contractor: The contractor shall have the right to have receipt acknowledged, if he so asks, of the communications and claims which he may direct to the engineer and in turn shall be obliged to return to him either the originals or copies of all the orders and notices which he may receive from him, placing at the foot thereof "noted." Manila, March 18, 1897. Carlos de las Heras." There is a rubric.

"Set of administrative and economical conditions which are provided for the contract in the public auction of the purchase of 1600 metric tons of coal for the maintenance of the engines in Santolan.

First. In the carrying out by contract of the supply of the 1600 metric tons of coal referred to there shall control, in addition to the general conditions approved by Royal Decree of June 11, 1886, and of the technical conditions corresponding to said surveys, the following administrative and economic rules:

2nd. The competitive bid shall take place in the capítular chamber of the government house before the Board of Auctions of the most excellent Ayuntamiento on the day designated by the official announcements.

3rd. The bids shall be in exact accordance with the model
65 which is set forth hereinafter and shall be filed in sealed covers.

4th. In order to take part in the bidding it is necessary that the bidder accompany the cover in which he solicits the same a deposit receipt in the amount of 384 pesos deposited in the treasury of the most excellent Ayuntamiento, which is equivalent to 2% of the total amount of the contract.

5th. When the bidding has been terminated the auctioneer shall forthwith endorse in favor of the most excellent Ayuntamiento, and with the proper explanation, the document of bidder's deposit, returning the remaining deposits to the interested parties.

6th. The bidder to whom the service shall have been awarded shall have 15 days' time from that on which he is notified of the approval of the award to deposit the final guaranty and execute the written contract after having made payment of the fees of publication in the Official Gazette: in default thereof within said period he shall lose the provisional deposit and the contract shall become null and the holding of a new competitive bidding shall be proceeded with.

7th. The contractor shall give guaranty to the satisfaction of the most excellent Ayuntamiento in an amount equal to 10% of the total amount of the contract. The amount of the original deposit made to take part in the bidding may form part of the said guaranty by changing the receipt therefor for another which shall state that it is devoted to this new purpose, and by completing the balance up to the total value of the guaranty, which shall remain deposited in the treasury of the municipality.

8th. The guaranty shall not be returned to the contractor
66 until the service is terminated and until it be established that he has satisfied the industrial tax and all damages, if such there be.

9th. The carrying out of the delivery shall be commenced within the period of 15 days from and after the date of the written contract and should be completed in the period of six months.

10th. The value of the deliveries made shall be accredited to him monthly in accordance with the results of the certificates issued by

the engineer, except in the case referred to in the following condition, and the payment shall be made by the treasury of the most excellent Ayuntamiento.

11th. The contractor may perform the work at a greater rate than necessary for the completion of the supply of fuel within the time hereinbefore fixed. Nevertheless he shall not have the right to be paid in one month a greater sum than that which corresponds thereto taking into account the sum of the award and the period for the performance. Therefore, the rights which Art. 38 of the general conditions grant to the contractor shall not be applied by taking as a basis the date of the service but that of the period in which the payments shall be made.

12th. In the event of proceeding with a verbal bidding in the case of a tie the minimum admissible evidence shall be that of 10 pesos as a betterment of offer.

13th. If the contractor shall convene any of the provisions of Art. 10 of the set of general conditions, or if he shall proceed with notorious bad faith, or sufficient (sic) activity in the fulfillment of his contract, there may be imposed by the Alcalde, at the suggestion of the directing engineer of the water supply, fines of from 5 to 25 pesos, whose total shall be discounted from the first certificate which may be issued, it being understood that he renounces in advance any recourse against this class of orders, either in common right or to any special form.

14th. The contract shall not be valid unless there appears thereon the approval of the most excellent Ayuntamiento.

15th. All the expenses of the competitive bidding as well as those of the execution of the contract and other documents shall be for and on account of the awarding party.

Manila, April 1st, 1897. Bernardino Marzano." There is a rubric.

The foregoing insert agrees literally with the sets of conditions mentioned, to which I refer.

Fourth. That in the guaranty of the fulfillment of his obligation the contracting party deposits the aforesaid sum of 1,920 pesos, which he has deposited as a final guaranty to secure the aforesaid contract, in favor of the most excellent Ayuntamiento of this city according to the above inserted receipt, authorizing said most excellent corporation, in the event that the contracting party shall fail to comply with any of the departmental or administrative conditions under which the contract in question has been awarded to him, to possess itself of said sum in order to collect the sums which may be in default, and for this purpose he obligates himself not to make any claim based upon the ignorance of any of the said conditions, to the fulfillment of which he obligates himself likewise in the most solemn form known to law.

Fifth. There being present the most excellent Don Grimersindo del Valle y Huerta, acting alcalde, and vice-president of the most excellent Ayuntamiento of this city, over the age of majority, married, and a resident of this city, without personal cedula because exempt in accordance with Article 73 of the

provisional regulation for the organization and control of notaries in these islands, and he, the said appearing party, is known to me and to my knowledge is at present exercising his said office, to all of which I certify. He in turn covenants that in the name of the most excellent Ayuntamiento, which he represents, he accepts this contract in the precise terms in which Tomas Luna Muñoz Mercado has executed the same, obligating said most excellent corporation to the exact fulfillment of whatever is incumbent upon it in accordance with the contents of the aforesaid sets of departmental and administrative conditions, which served as a basis for the competitive bidding for the contract in question. Thus the contracting parties state and execute in the presence of the witness Tomas Aquilon and Zacarias San Pedro, both over the age of majority and residents of this city. And this document having been read by all of the parties present, in the exercise of the right of which the law grants them, the executing parties ratify the same, and all sign with approval of the interlineations "en" "a numero 2" erasure "de la cantidad total" and corrections "reclamacion" "84" "first April" "consti," to all of which and to the identification profession and residence of the appearing parties I certify. Tomas Luna Muñoz, Grindo del Valle, Tomas Aquilon, Zacarias S. Pedro, Don Enrique Barrera y Caldez. This is a copy, Dr. Barrera.

3. ANNEX C.

2. No. 86. First copy document of sale, assignment and transfer, for the price of 1,920 pesos, of the contract for the supply of 1600 metric tons of coal, executed by Tomas Luna Muñoz Mercado in favor of Ricardo Aguado y Goñi, acknowledged by Enrique Barrera y Caldez, Doctor in civil and canonical law, and notary public, in Manila on the 10th day of February, 1899.

No. 86. In Manila on the 10th day of February, 1899, before me, Don Enrique Barrera y Caldez, doctor in civil and canonical law, practicing attorney and notary public of Manila, with domicile and residence therein, appeared as one party Don Tomas Luna Muñoz Mercado, scribe, over the age of majority, married, and resident of this city, with current personal cedula of the 6th class No. 101,310 issued by the Administration of Public Exchequer of this province; and as the other party Don Ricardo Aguado y Goñi, merchant, over the age of majority, married, and resident of this city, with current personal cedula of the 4th class No. 1183, issued by the Administration of Public Exchequer of this province; and having, in my judgment, the necessary legal capacity, execute this document without anything to the contrary appearing to me.

Don Tomas Luna Muñoz Mercado free and voluntarily states:

First. That informed by the Gazette No. 94, corresponding to the 4th day of April, 1897, that on the 12th day of the said month at 10 o'clock A. M. there would be let at public auction the supply of 1600 tons of rock coal, preferably that of the Philippine Islands, or in default thereof of Australian origin, for the purpose of the

- 70 service of the pumping plant of the water supply service in this city under the basis of 12 pesos per metric ton for Australian coal in descending progression before the Board of Auctions of the most excellent Ayuntamiento of this city, and upon the arrival of said day and hour designated, the appearing party presented an offer, accompanied by the opportune receipt of provisional deposit executed for bidders, in which bid he offered to take in his charge the said supply for the sum of 12 pesos for each metric ton of Australian coal, subject, however, to the approval of the most excellent Ayuntamiento of this city, which subsequently approved the same in ordinary session held on the 26th day of April of the said year of 1897, and the said appearing party having deposited, in accordance with the order of the most excellent senior acting Alcalde in a decree dated May 20th, of the same year, in the treasury of the most excellent Ayuntamiento of this city, and at the disposition of the same most excellent corporation as a final guaranty to secure the fulfillment of his obligation the sum of 1,920 pesos, as is shown by the corresponding receipt issued by the said treasury on the 1st of June of the said year, of which note was taken in the accounting department of the said most excellent corporation, and the said appearing party having executed under No. 416 in order in this city, before the present notary, on the 11th day of June of the said year 1897, the corresponding document of contract in favor of the said most excellent Ayuntamiento, in which document are found literally inserted the minutes of the competitive bidding, and of the session finally approving the provisional award, the said receipt which evidences the deposit of 1,920 deposited to guarantee the fulfillment of his obligation and the sets of conditions, both
- 71 departmental and administrative, which served as a basis for the competitive bidding in question.

Second. That having agreed with the other appearing party upon the transfer and sale of the said contract in order that the same may appear in an authentic manner, by the present document the said party solemnly covenants that he sells, assigns and transfers, free of any responsibility, to Don Ricardo Aguado y Goñi whatever rights, actions and obligations may correspond to him as such contractor for the supply of 1600 metric tons of Australian coal for the purposes of the pumping plant of the water supply service in this city which has been awarded to him, as is seen in the contract above mentioned and reviewed in the foregoing paragraph for the price of 1,920 pesos, which he declares and confesses to have received of said Sr. Aguado prior to this act in cash counted to his entire satisfaction, and for which he executes in the latter's favor the most binding and conclusive receipt proper for the latter's right and security, it being understood that there is included within the present transfer the deposit made by the appearing party as is hereinabove set forth in the treasury of the most excellent Ayuntamiento of this city in the sum of 1,920 pesos as final guaranty to secure the fulfillment of the said contract according to the aforesaid receipt.

Third. That by virtue of the present sale, assignment and transfer he places Don Ricardo Aguado y Goñi in his place,

class and preference in all which may have reference to the contract in question, and for that purpose considers him and desires that he be considered as such contractor of said supply in such manner that if the quoted contract dated 11th June, 1897, had been executed by him the said Aguado and the deposit of 1,920 pesos deposited in guaranty of its fulfillment had been made by him the said Aguado. And for that purpose and for the necessary covenants he gives and confers upon him (the said Aguado) most ample and complete power, both to exercise the rights and actions and fulfill the obligations which are incumbent upon the said appearing party as such contractor, as well as to solicit the withdrawal, return and delivery of the aforesaid guaranty of 1,920 pesos, authorizing him to execute and practice for the carrying out of these objects, and by virtue of this document, whatever acts, proceedings and transactions may be necessary or required of him by whatsoever person, corporation, company, or office of the said province or municipality, or their successors, or those who may have assumed the rights, actions and obligations thereof.

4. Don Ricardo Aguado y Goñi, in his turn, covenants that he accepts this document in its exact terms in which Don Tomas Luna Muñoz has executed the same.

Fifth. For the fulfillment of that set forth and covenanted the contracting parties obligate themselves in the most solemn form known to law, designating this city as the place in which the notices, citations and other process, judicial and extrajudicial, to which this document may give rise, shall be made.

Thus the contracting parties state and covenant in the presence of the attesting witnesses:—Jose Rosado y Calvo, attorney, and Tomas Aguilon y Pasetes, employee, both over the age of majority and residents of this city. And this document having been read by all of the parties present, in the exercise of the right which the law grants them, the executing parties ratified the same, and all sign. To all of which, and to the identification, profession and residence of the contracting parties, I certify. Tomas Luna Muñoz, Jose Rosado y Calvo, Tomas Aguilon y Pasetes.

(Sig.) DON ENRIQUE BARRERA Y CALDES.

There is a rubric."

This is a first copy of its original, with which it agrees, and to which I refer. Said original appears with No. 86 in the Register of Public Instruments of the Notary in my charge, corresponding to the present year, and at the instance of Don Ricardo Aguado y Goñi I issue the present in three sheets of common paper, in the absence of paper of the proper class, and after notice for its rehabilitation by the interested party in the proper case and when it should be necessary. To all of which I sign and affix my rubric in Manila on the date of its execution, annotating the withdrawal of this copy upon the corresponding matrix as I certify.

DR. ENRIQUE BARRERA Y CALDES.

There is a rubric.

74 Seventh. On the 27th day of March, 1906 the Court of First Instance of the City of Manila rendered the following decision:

Title of Court and Cause.

This case is on for hearing upon the complaint, answer, agreed statement of facts and exhibits and it appears to the Court from the record that this is a suit by the plaintiff, who is the assignee of Tomas Lunas Munoz, against the City of Manila, as trustee of the Carriedo Fund.

It further appears to the Court that Tomas Luna Munoz on the 11th day of June, 1897, entered into a contract with the Ayuntamiento of Manila to furnish for said water-works 1600 tons of Australian coal at the price of 12 pesos Mexican currency per ton, and that said coal was furnished as per contract and was all paid for as per contract, except the last amount furnished of 259.70 tons of the value of 3,117.40 pesos Mexican currency.

It further appears to the Court from the agreed statement of facts that on the 30th day of June, 1898, the Ayuntamiento of Manila had and received of plaintiff's assignor 39 tons of Australian coal for the uses and purposes of said Carriedo Water-Works; that said 39 tons of Australian coal was worth the sum of 15 pesos Mexican currency per ton, being the total value of 585 pesos Mexican currency.

It further appears to the Court from the agreed statement of facts, as well as from the contract hereinbefore referred to, that on the 1st day of June, 1897, the said Tomas Luna Munoz deposited the sum of 1920 pesos Mexican currency with the said Ayuntamiento of Manila as security to guarantee the fulfillment and completion of said contract, and it is further agreed that said contract
75 was complied with, as per its terms and that said 1920 pesos was never restored to said Tomas Luna Munoz or to his assignee, the plaintiff in this case.

It further appears to the Court from said agreed statement of facts that the City of Manila at the present time and ever since the organization of said city, on the 6th of August, 1901, has been in possession of the water system known as the "Carriedo Water Works", of the lands belonging to said Water Works and of ninety-four shares (94) of the capital stock of the Spanish-Filipino Bank of the value of about 18,400 pesos Philippine Currency. That said shares of stock constitute a part of the Carriedo Funds in the hands of the Ayuntamiento of Manila prior to August 13, 1898, and that the dividends and income accruing to said shares have been received and collected at all times since the 16th of August, 1901, by the defendant, the City of Manila, and that the defendant, the City of Manila, has exclusive charge of the maintenance and operation of said water system, collects and receives the moneys due and payable for the consumption of the water supplied thereby and disburses the money necessary for salary, supplies, repairs and improvements, according to the terms and conditions of its Charter, Act 183 of the Philippine Commission.

The Court finds from the record that the Carriedo Water Works

is the result of trust funds left by Carriedo for the purpose of constructing and maintaining a water-works system for the people of the City of Manila and that the Ayuntamiento of Manila took charge of said fund as trustee and that since the organization of the present City of Manila, it has had charge of said water-works, and trust property, and operating the same.

76 It appears from the contract entered into by the Ayuntamiento of Manila with Tomas Luna Munoz, that it was with reference to said trust fund and that the same was so entered in the said trust funds records of books.

The Court is of the opinion that the trust property is liable for the payment of the debt sued on in this case.

The Court finds that plaintiff is entitled to recover for the 259.70 tons of Australian coal at 12 pesos amounting to 3,116.40 pesos Mexican currency, as per contract; for the 39 tons of Australian coal which it is agreed was worth 15 pesos per ton, amounting to 585 pesos Mexican Currency; also the 1920 pesos Mexican Currency deposited with said trustee for the faithful fulfilment of said contract, all aggregating the sum of 5,621.40 pesos, together with the interest thereon for seven years amounting to 2360.98 pesos, aggregating a total of 7,982.38 pesos Mexican currency. It is, therefore,

Ordered, adjudged and decreed by the Court that the plaintiff, Ricardo Aguado, recover of the defendant, the City of Manila, as trustee of the Carriedo Fund, the said sum of 7,982.38 pesos Philippines Currency (It being agreed that the value of Mexican currency is this day equivalent to that of Philippines Currency) and the cost of this suit, for which it is specially ordered that execution issue, to be levied of the property of the said Carriedo Fund consisting, as agreed, of the Carriedo Water Works, the lands belonging to and pertaining to said Water Works and ninety-four shares of the capital stock of the Spanish-Filipino Bank now in the hands and being administered by the defendant, the City of Manila as Trustee of said Carriedo Fund.

77 It is insisted by counsel for the defendant that a municipal corporation cannot act as trustee. I am satisfied from the authorities that this contention is not sound. The City, like an individual, if it assumed to act as trustee, as in this case, and should make contracts with and necessary to its maintenance and operation, the fund would be liable, but I have no doubt as a legal proposition about the capacity of the City to act as trustee of this property.

Dated, Manila, P. I., March 27th, 1906.

(S'g'd)

JOHN C. SWEENEY,

Judge.

78 Eighth. That on the 28th day of March, 1906, the defendant excepted to the foregoing judgment and decision and gave due notice of its intention to present a bill of exceptions for the review of this cause by the Supreme Court of the Philippine Islands.

Ninth. That on said 28th day of March, 1906, the defendant prayed for the revocation of the foregoing judgment and for a new trial of said cause.

Tenth. That on said 28th day of March, 1906, the Court of First Instance of the City of Manila denied the motion for a new trial and the defendant herein filed its exception to the order denying the same.

Eleventh. That on the 29th day of March, 1906, the defendant presented its bill of exceptions containing the foregoing record of the pleadings and proceedings had in said cause in the Court of First Instance of the City of Manila, and bearing the following certificate, to-wit:

I certify that the foregoing bill of exceptions is true and correct, and contains all of the matters essential for the clear understanding of the errors assigned. It is ordered that the Clerk of this court transmit to the Supreme Court said bill of exceptions in order that the errors which are therein alleged may be considered and reviewed. Given at Manila this 29th day of March, 1906.

JOHN C. SWEENEY, *Judge*.

I, R. Heras, deputy clerk of the Court of First Instance, certify that the foregoing is the original bill of exceptions presented by the excepting party in cause 1759, commenced by Ricardo Aguado against the City of Manila, which bill has been approved
79 and certified by the Honorable John C. Sweeney, Judge of Department III.

In witness whereof I have signed the present and sealed the same with the official seal of this court this 29th day of March, 1906.

R. HERAS,

*Deputy Clerk of the Court of
First Instance of Manila.*

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 3rd day of April, 1906, at 11:20 A. M.

J. E. BLANCO, *Clerk*,

By H. D. McGEORGE, *Deputy*.

80 That thereafter, to-wit, on the 9th day of January, 1908, and after the respective parties had been heard, and the within cause had been submitted for the consideration and decision of the Supreme Court of the Philippine Islands, the said court rendered its decision in the following terms, to-wit:

Title of Court and Cause.

"JOHNSON, J.:

This was an action commenced by the plaintiff, as assignor of certain claims held by Tomas Luna Muñoz against the defendant, on the 28th day of April, 1903, in the Court of First Instance of the City of Manila, for the purpose of recovering of the City of Manila the sum of P5,621.40, with interest and costs.

The complaint contains three separate causes of action against the defendant, two of them being for coal sold and delivered to the predecessor of the present city of Manila, the *Ayuntamiento de Manila*, as administrator *de las aguas de Carriedo*, for which the

plaintiff claims there was due him upon the first cause of action the sum of P3,116.40 and upon the third cause of action the sum of P585.00. The second cause of action alleges that the plaintiff deposited with the said *Ayuntamiento de Manila* the sum of P1,920 as a guaranty for the fulfillment of the contract sued upon. The plaintiff prayed for judgment for the sum of P5,621.40, with interest and costs.

After the respective parties had filed their pleadings they entered into a stipulation as to the facts which should be admitted as true in said cause, which stipulation is as follows:

81 'Now come the respective parties hereto, plaintiff and defendant, duly represented by counsel, and stipulate and agree that, for the purposes of the above-entitled action, the following statement of facts shall be regarded as established and proved and that the decision in said above-entitled action shall be based upon said statement of facts:

I.

That the defendant, the City of Manila, is now and ever since the 31st day of July, 1901, has been a municipal corporation, duly organized and existing under and by virtue of the laws of the Philippine Islands.

II.

That on the 11th day of June, 1897, and for many years prior thereto and for more than one year thereafter, the Ayuntamiento of Manila was a municipal corporation duly organized and existing under and by virtue of the laws of the Kingdom of Spain.

III.

That on or about the 11th day of June, 1897, Tomas Luna Muñoz made and entered into a certain contract with the said Ayuntamiento of Manila, said contract being in the terms and figures appearing in the copy thereof annexed to the complaint. (See record, pp. 4-19.)

IV.

That prior to the 1st day of April, 1898, under and in pursuance of the terms of said contract, the said Tomas Luna Muñoz sold and delivered unto said Ayuntamiento of Manila, 1,340.30 tons of coal and received and collected thereof, of and from the said Ayuntamiento of Manila, the sum of 16,083.60 pesos, Mexican currency, the contract price thereof; that between the 1st day of April, 1898, and the 30th day of April, 1898, under and in pursuance of the terms of said contract, the said Tomas Luna Muñoz sold and delivered unto the said Ayuntamiento of Manila, 259.70 tons of coal of the value of 3,116.40 pesos, Mexican currency, at the contract price of 12 pesos, Mexican currency, per ton.

V.

That thereafter, to-wit, on or about the 26th day of July, 1898, the said Tomas Luna Muñoz made due demand in the manner re-

quired by law and by the terms of said contract for the payment of said sum of 3,116.40 pesos, being the amount due as aforesaid for said 259.70 tons of coal delivered, as aforesaid, during the month of April, 1898. That, notwithstanding said demand, the said sum was not paid by said Ayuntamiento of Manila and the same, and the whole thereof, remained and now remains wholly due and unpaid.

VI.

That thereafter, to-wit, on or about the 13th day of August, 1898, the said Ayuntamiento of Manila was forcibly suspended in the exercise of all its functions by the conquest and occupation of the city of Manila by the military forces of the United States of America. That at all times between the said 13th day of August, 1898, and the 6th day of August, 1901, the Military Government of the United States of America was the acting successor of the Ayuntamiento of Manila and as such was possessed of the funds, property, and revenue theretofore in the possession of the said Ayuntamiento of Manila.

83

VII.

That at various times between the 13th day of August, 1898, and the 6th day of August, 1901, demand was duly made upon the said Military Government of the United States in and for the Philippine Islands, in the manner required by law and by the terms of said contract, for the payment of said sum of 3,116.40 pesos, Mexican currency, due, payable, and unpaid as aforesaid, and the said sum, and the whole thereof, was not paid but remained and now remains due, payable, and unpaid.

VIII.

That on or about the 1st day of February, 1899, the said Tomas Luna Muñoz sold, transferred, and assigned all his right, title, and interest in and to said sum of 3,116.40 pesos, Mexican currency, unto the plaintiff hereinbefore named, and said plaintiff, ever since said last-named date, has been and now is the sole and exclusive owner of said credit of 3,116.40 pesos, Mexican currency.

IX.

That on or about the 6th day of August, 1901, the defendant, the City of Manila, became the acting successor of the above-named entities in the discharge of all of the municipal functions.

X.

That at various times since the said 6th day of August, 1901, plaintiff has made due demand upon the defendant in the manner required by law and by the terms of said contract for the payment of said sum of 3,116.40 pesos, Mexican currency, and the said defendant has failed and refused to pay said sum or any part thereof and the same remains due and wholly unpaid.

84

XI.

That in addition to the foregoing facts and under and in pursuance of the terms of said contract, said Tomas Luna Muñoz did, on or about the 1st day of June, 1897, deposit the sum of 1,920 pesos, Mexican Currency, with the said *Ayuntamiento* of Manila as security to guarantee the fulfillment and completion of the above-mentioned contract. That prior to the 30th day of April, 1898, said Tomas Luna Muñoz had well and truly fulfilled all the terms and requirements of said contract and had faithfully and truly discharged and fulfilled the obligation therein prescribed and contained.

XII.

That at various times thereafter the said Tomas Luna Muñoz and his successor in interest has made due demand in the manner required by law and by the terms of said contract for the return and repayment by the *Ayuntamiento* of Manila, by the Military Government of the United States in the Philippine Islands, and by the defendant, the City of Manila, respectively, for the return and repayment of said sum of 1,920 pesos, that said entities have successively wholly failed to return the whole or any part of said sum, and the whole thereof remains due, unpaid, and payable.

XIII.

That on or about the 10th day of February, 1899, the said Tomas Luna Muñoz sold and transferred and assigned all of his right, title, and interest in and to said sum of 1,920 pesos, Mexican currency, above mentioned unto the plaintiff herein, and the said plaintiff ever since has been and now is the sole and exclusive owner of said credit.

85

XIV.

That on or about the 30th day of June, 1898, the *Ayuntamiento* of Manila had and received of plaintiff 39 tons of Australian coal for the uses and purposes of the said Carriedo waterworks; that said 39 tons of Australian coal was reasonably worth the sum of 15 pesos per ton, or a sum total of 585 pesos. That thereafter and on or about the 26th day of July, 1898, the said plaintiff made due demand in the manner required by law for the repayment of said sum of 585 pesos, Mexican currency. That notwithstanding said demand said sum was not paid by said *Ayuntamiento* of Manila. That thereafter, at various times, said plaintiff has similarly made due demand upon the Military Government of the United States in the Philippine Islands and of the defendant, the present city of Manila, for the payment of said sum so due as aforesaid, and the same has been successively refused and denied by said entity and still remains due and unpaid.

XV.

That the facts contained and recited in the pamphlet entitled *Carriedo y sus obras* marked for identification "Plaintiff's Exhibit A," in so far as they are material and relevant, are deemed to be true.

XVI.

That the city of Manila at the present time and ever since the organization of said city on the 6th day of August, 1901, has been in possession of the water system known as the "Carriedo water-works" and of the lands belonging and pertaining to said water works, and of 94 shares of the capital stock of the Banco Español Filipino of the value of about 18,400 pesos, Philippine Cur-

86 rency, which said shares of stock constituted a part of the Carriedo funds in the hands of the *Ayuntamiento* of Manila prior to August 13, 1898; that the dividends and income accruing to said shares have been received and collected at all times since the 6th day of August, 1901, by the defendant, the city of Manila. That said defendant, the city of Manila, has exclusive charge of the maintenance and operation of said water system, collects and receives the moneys due and payable for the consumption of the water supplied thereby, and disburses the money necessary for salaries, supplies, repairs, and improvements according to the terms and conditions of its Charter, Act No. 183 of the Philippine Commission (sec. 72).

It is further agreed and stipulated by the parties through their respective attorneys as follows:

A.

That on or about August 13, 1898, at the time of the suspension of the *Ayuntamiento* of Manila herein referred to, all funds and moneys pertaining to the said *Ayuntamiento* (including all moneys deposited with the said *Ayuntamiento* as security for the performance of contracts with said *Ayuntamiento*) and of the said Carriedo waterworks were turned over to the Military Government of the Philippine Islands and covered into the general funds of the said Military Government called "Public civil funds," which said funds were disbursed upon general orders of the Military Government of the said Islands.

B.

87 That all taxes of the city of Manila and those corresponding to the Carriedo waterworks collected during the Military Government were covered into the said "Public civil funds" and disbursed as aforesaid.

C.

That all moneys and funds pertaining to the said "Public civil funds" were, on or about September 1, 1900, turned over to the Insular Treasurer of the Philippine Islands and disbursed pursuant to appropriation by the Philippine Civil Commission.

D.

That in the year 1884 said Carriedo waterworks were constructed at a cost of about 1,027,000 pesos; that of the said cost price said city of Manila, by means of raising a tax upon meat, pursuant to royal order of November —, 1876, contributed a material portion.

E.

That since the construction of the said waterworks the *Ayuntamiento* has considered it necessary to make certain repairs, alterations, and extensions in the said waterworks and has made the same. That the moneys collected by the said *Ayuntamiento* as taxes for the use of said water by consumers, together with other incomes from the said Carriedo property, has been insufficient to pay for all of said repairs, alterations, and extensions and that the deficit has been paid by the said *Ayuntamiento* of Manila.

F.

That the said Military Government in a like manner deemed it necessary and made said repairs, alterations, and extensions of said system with the money raised as taxes upon the use of said water; the proceeds from other sources pertaining to the said
88 Carriedo being insufficient to meet said repairs, alterations, and extensions, the deficit was supplied by the said Military Government by means of said tax on meat. That the said deficits for the years 1898, 1899, 1900, 1901, and 1902 amounted to about 34,000 pesos.

G.

That since August 6, 1901, the city of Manila, through its Municipal Board, deemed it necessary to make further repairs, alterations, and extensions of said waterworks and that the taxes upon the consumers of the said water, together with the incomes of all properties of the said waterworks have been insufficient to meet the said expenses, and that the said city, out of its common funds, has paid the difference for said repairs, alterations, and extensions. That said deficit for the years 1903, 1904, to June 30, 1905, amounted to 9,205 pesos, Philippine currency.

H.

That the said tax upon meat collected pursuant to said royal order of November, 1876, has been collected from said date up to and including July, 1902, when the same was repealed.

It is further agreed that up to the 13th day of August, 1898, the funds of the Carriedo waterworks were kept separate and distinct by the *Ayuntamiento* of Manila.

It was further stipulated by the parties to the action that the following exhibits should constitute a part of the agreed statement of facts:

(1) A publication entitled *Carriedo y sus obras*, as Exhibit A of the plaintiff.

(2) A deposition presented by Carlos de los Heras dated the 22nd day of May, 1902.

89 (3) Exhibits A, B and C of the record.

(4) Exhibit B of the plaintiff, which is a document referring to the payment made to Tomas Muñoz for the coal delivered in March, 1898.

(5) Exhibit C of the plaintiff, being the record of the delivery of the coal by the said Tomas Muñoz, with the unpaid bill therefor.

After a consideration of the facts stipulated between the respective parties to the action and the foregoing exhibits, the lower court on the 27th of March, 1906, rendered a judgment against the defendant, the city of Manila, as trustee, for the sum of P5,621.40 and interest, amounting to the sum of P3,260.98, making a total sum of P7,982.38 and costs, and ordered that an execution be issued to be levied upon the property of the said Carriedo fund, consisting, as per said stipulation, of the Carriedo waterworks, the lands belonging and pertaining to the said waterworks and 94 shares of the capital stock of the Spanish-Filipino Bank, now in the hands and being administered by the defendant, as trustee of the said Carriedo fund.

From this decision the defendant appeal- to the Supreme Court and made the following assignment of error, that:

(1) The Court erred in finding that the contract entered into by and between Tomas Luna Muñoz on June 11, 1897, and the Ayuntamiento of Manila was a contract between said Muñoz and the Carriedo funds and waterworks.

(2) The court erred in finding that the title of the city of Manila to the Carriedo funds and waterworks was one of possession and not of complete ownership.

(3) The court erred in finding that the Carriedo funds and waterworks constituted and still constitute a trust estate and that the present city of Manila has been since its organization trustee for the same.

90 (4) The court erred in finding that the contract between the Ayuntamiento of Manila and the said Muñoz was made with reference to the funds in trust.

(5) The court erred in finding that the property styled "Carriedo funds and waterworks" is responsible for the payment of the debt sued for by plaintiff.

(6) The court erred in finding that Ricardo Aguado was entitled to recover from defendant city of Manila as trustee of the Carriedo fund the sum P7,982.38, Philippine currency, and the costs of this suit, or any sum of money whatever, for the coal delivered under his contract by the said Muñoz to the said Ayuntamiento of Manila, and for money deposited by said Muñoz with the said Ayuntamiento as guaranty for carrying out said contract.

(7) The court erred in ordering execution against the property of the city of Manila consisting of waterworks and lands pertaining to it and to 94 shares of the Spanish-Filipino Bank.

(8) The court erred in finding that the said waterworks, lands, and shares are subject to execution.

(9) The court erred in finding that the title of the city of Manila was not of absolute ownership but as trustee for said lands and shares.

(10) The court erred in finding that the Ayuntamiento of Manila could be trustee of a trust estate for the benefit of its inhabitants and act as such with regard to contracts in respect of such funds.

(11) The court erred in finding that the present city of Manila

may be a trustee of a trust estate for the benefit of its inhabitants and act as such with regard to contracts in respect of such funds.

(12) The court erred in finding that a particular fund belonging to the city of Manila can be subject to suit and execution before the same has been appropriated by the United States Philippine Commission.

(13) The court erred in giving judgment in favor of plaintiff against defendant (used as fideicomisario and administrator of the Carriedo waterworks) as trustee for said works.

(14) The court erred in giving judgment against defendant and granting execution against its property.

The appellant assigns many errors alleged to have been committed by the lower court. The questions presented by all the said assign-

ments of error are (1) whether or not the present city of Manila is liable under the contracts referred to in the agreed
91 statement of facts, for the obligations created therein by the old city of Manila (Ayuntamiento de Manila) as its successor, and (2) if it is, whether the plaintiff is entitled to a writ of execution against any of the property of the present city for the purpose of satisfying that liability when the same has been reduced to a judgment.

The lower court held that the present city of Manila was liable upon such contracts, upon the theory that it was the successor of the old city of Manila (Ayuntamiento de Manila) as it existed under the Spanish Government. The lower court held that the old city of Manila (Ayuntamiento de Manila) was the trustee and administrator of the Carriedo Waterworks, and as such trustee was responsible for all the debts created or contracted in the administration of such works. This fact is neither admitted nor denied in the agreed statement of facts; neither is there anything in the record which justifies that conclusion. The contracts upon which the plaintiff relies for the recovery in no way indicate that the Ayuntamiento de Manila made said contracts as trustee, nor in a representative capacity, but, upon the contrary, the contracts themselves show that they were made by the Ayuntamiento de Manila with the assignor of the present plaintiff simply as the Ayuntamiento de Manila and not as trustee or agent. Our conclusion is, then, upon this question, that the contract which the assignor of the present plaintiff made with the Ayuntamiento de Manila was made with the old city in its corporate capacity simply and not in a representative capacity as trustee or agent. If there has been a violation of the terms of the contract such violation was made by the Ayuntamiento de Manila and not by the present city of Manila. This conclusion makes it unnecessary for us to discuss the relation of trust so ably
92 presented in the briefs of the different attorneys.

A municipal corporation is a governmental agent of the state, given authority to govern the people in a limited portion of the state. This power, however, is limited to certain particular governmental functions, which are always expressed in writing in the form of a charter or grant of powers. To ascertain what this power is in each particular case, reference must be made to such

grant of powers. Powers not expressly given therein or necessarily implied from such express powers can not be exercised by such governmental agent.

Experience has taught nations that when men congregate in large numbers in a small portion of the state, it is convenient to permit such persons, in a limited way, to govern themselves, the state retaining the authority to modify, enlarge, restrain, or to absolutely revoke such grant of power at any time this convenience ceases. In all cases a municipal corporation is a mere instrumentality of the state for the convenient administration of a local government over limited territory, and as such is vested with subordinate power for local purposes only. The very moment it subverts these powers or arrogates to itself others not granted, or for any other reasons deemed to be sufficient, the state may revoke its authority, dissolve such corporation, and bring all the inhabitants and such property again under the direct control of the state or central government in all their relations among themselves and with the state. There is no contract between the state and the public that the charter of a city shall not be at all times subject to legislative control. There is no such thing as a vested right held by any individual in the granting of legislative power to municipal corporations. (Meriwether vs. Garret, 102 U. S., 472, 511; U. S. vs. Ry. Co., 17 Wallace, 322; Commissioners vs. Lucas, Treasurer, 93 U. S., 108; Philadelphia vs. Fox, 64 Penn. State, 169; Cooley, Constitutional Limitations, 192, 193.)

Many instances might be cited to show where the central government has exercised this prerogative.

It being the doctrine well established then that a municipal corporation is a mere agent of the state, what then is the status of said corporation when the state itself is destroyed? Certainly the general consequences of the death of the principal must follow in its effect upon the authority of the agent. The death of the principal always invokes the agency when there are no vested right-involvement. A municipal corporation has no vested right to exist as such. The state may at any time revoke its charter. Of course the state might by such revocation, incur certain moral obligations, but the performance of these obligations would always rest upon the conscience of the law-making or charter-granting authority of the state. The courts have no equitable or legal authority to compel the state to comply with obligations of this kind in the absence of proper legislation.

The principal of the old city of Manila (Ayuntamiento de Manila) was the Spanish government in the Philippine Islands, and when that government, on the 11th day of April, 1899, at least, ceased to exercise any power or control over this territory (the Philippine Islands), all its agents, including the Ayuntamiento de Manila, also ceased to exist, and therefore this agent was without authority either to make or to perform contracts. There was no functionary of either Government left with any authority whatever. The Spanish Government, with all its governmental agencies, upon the 11th day of April, 1899, at least, ceased to have or

to exercise any functions within the Philippine Islands. Upon that day the people who formerly constituted the Ayuntamiento de Manila became subject to the general laws (not political) applicable to the whole territory and to such rules and regulations as the new authority might see fit to promulgate. After that date all persons who had rights or obligations preexisting against such defunct governments were left to their remedy against such defunct governments, unless such rights were vested rights, or unless by treaty obligations or otherwise the new government had in some way obligated itself to respond to such individuals. It becomes important, therefore, to ascertain whether the new authority has in any way obligated itself to respond to the plaintiff herein. Our attention is called to article 8 of the treaty of Paris. But this is a compact between the United States Government and the Crown of Spain, and of course the city of Manila could not, if it would, be obligated by any terms of that compact without an express authorization on the part of the proper power or authority.

The City of Manila is in no way the successor of the Ayuntamiento de Manila in law. The mere fact that the present authority in these Islands has given to the present city powers like those exercised by the Ayuntamiento de Manila in no way makes the former the successor of the latter. It is — entirely new organization, a new agent of a new principal, and only has such authority, such powers, and such obligations and responsibilities as the new principal has seen fit to grant and impose. The grant of powers (the Charter of Manila) has been examined in vain to find anything which
95 would make the present city of Manila liable in any way to comply, even though it desired to do so, with the obligations contracted by the Ayuntamiento de Manila, and therefore we must hold, as we do hereby, that the present city of Manila is in no wise responsible to the plaintiff upon the contracts made between its assignor and the old city of Manila.

These foregoing conclusions do not amount to a denial of the obligations or a refusal to comply with the same. They are simply that the obligations upon which the plaintiff seeks to recover never were incurred by the present city of Manila; neither can the foregoing conclusions be construed to be an attempt to violate the terms of the contracts. They are simply to the effect that no contract obligations, with reference to the claim of the plaintiff, ever existed.

These conclusions make it unnecessary for us to discuss the second question above suggested, for the reason that the city not being liable upon the contract, no question as to the right to take out a writ of execution against the property of said city can arise in the present case.

For the foregoing reasons the judgment of the lower court is hereby revoked, and without any finding as to costs, it is so ordered. Arellano, C. J., Torres, Carson and Willard, JJ., concur.

Mapa, J., did not sit in this case.

Tracy, J., concurs in the result.

Judgment reversed.

96 That thereafter, to-wit, on the 13th day of January, 1908, the plaintiff herein duly excepted to the said judgment and prayed for the revocation and setting aside thereof, and for a rehearing of said cause in the following terms, to-wit:

(Title of Court and Cause.)

Now comes the above named plaintiff and appellee in the above entitled cause, and hereby excepting to the decision heretofore rendered therein by this Honorable Court, respectfully moves the Court to vacate and set aside said decision, and to grant a rehearing of the appeal herein.

The principal ground upon which the foregoing petition is based is that the question involved in this appeal, and presented by the record, has not been considered nor passed upon in said decision. The action is one commenced against the City of Manila, as trustee and administrator of the Carriedo Waterworks. The question presented is whether the City of Manila, as the present trustee, is liable, with the trust funds, for an obligation incurred *for an obligation incurred* by a former trustee. This question has not been considered nor decided. Instead, the decision determines that the City of Manila, as a municipal corporation is not liable for the debts and obligations of the defunct Ayuntamiento de Manila. It is respectfully submitted that the latter question could not be raised by the pleadings in this case, inasmuch as the City of Manila is here sued purely in her representative capacity as trustee.

The ground upon which the consideration of the real question has been refused in this decision is that the existence of such trust is

97 "Neither admitted nor denied" in the facts stipulated of record. The agreed statement of facts contains a complete and detailed history of this trust, its origin, administration and execution. The admission of these facts necessarily must prove or disprove conclusively the existence of the alleged trust. The statement that is contained in the decision that the trust has neither been admitted nor denied can only be attributed to the fact that the Court has overlooked the fact that Exhibit "A", which is a pamphlet entitled "Carriedo and His Works," has been expressly made an integral part of the agreed statement of facts, and that the truth and correctness of all of its contents was expressly admitted.

None of the parties litigant has argued, nor claim, that all of the necessary facts were not duly and properly before the court. The suit was filed, discussed and submitted in both instances upon these facts. The defendant has maintained not that the facts of record are not sufficient to constitute a trust, but that these facts negative such a trust on legal grounds: that this trust was not possible under the laws of the Philippine Islands. All of the facts are before the court and unless there is merit in the foregoing contention concerning the legal effect of these facts they must necessarily establish the alleged trust. The decision does not claim to pass upon the legal effect of these facts, nor whether they constitute or negative the existence of a trust, but, without discussion thereof, determines the

action upon the statement that the trust has not been admitted not denied.

In addition to the facts contained in Exhibit "A" above referred to, which fully sets forth the facts relied upon as constituting the trust, there will be found in the record repeated evidence that

98 the contract in question was not made by the Ayuntamiento of Manila as such, but that the same was made in its capacity of administrator of the Carriedo funds. Exhibits "B" and "C" disclose that the specifications and the competitive bidding upon which this contract was based, were caused to appear in the minute books of Carriedo, and the contract contains express reference to the same. The order for the payment of sums upon this contract is entitled "Ayuntamiento de la M. etc. City of Manila, No. 2. Funds of the pious legacy of Francisco Carriedo." The notation of the intervener directs the payment from the Carriedo appropriation. Although these last facts do not of themselves prove the existence of a trust, they do prove that this contract was not made by the Ayuntamiento as such, but as administrator of the trust whose existence is established by the proofs of the legacy and its terms and conditions.

In presenting this petition we do not consider it possible that the intention of this Court has been to reverse the decision of the Court of First Instance and that the Attorney General, to the effect that the legacy of Carriedo and its terms constitute a trust, for, in such case, this Court would have found that the facts contradicted or denied the existence of a trust; but this is not the decision since it is found that the facts do not deny the existence of the trust.

For the foregoing reasons we respectfully maintain that the decision re-dereced herein should be set aside and that a rehearing of this appeal should be granted.

Manila, January 13, 1908.

HAUSSERMANN, COHN AND WILLIAMS,

Attorneys for Appellee.

99 On the 14 of January, 1908 the said Supreme Court allowed the foregoing exception to the decision filed on the 9th of the same month and denied the rehearing prayed for.

100 UNITED STATES OF AMERICA,
Philippine Islands:

Supreme Court of the Philippines, Clerk's Office. Filed Jul- 1, 1908, 10.30 a. m. R.

In the Supreme Court of the Philippine Islands.

#3282.

RICARDO AGUADO, Plaintiff and Appellee,
vs.

THE CITY OF MANILA, Administrator of the Carriedo Waterworks and Funds, Defendant and Appellant.

Ricardo Aguado, the above named plaintiff and appellee, feels himself aggrieved by the decision, order and decree made and

entered in the above entitled cause on the 9th day of January, 1908, wherein and whereby it was ordered, adjudged and decreed that within thirty days from the filing of said decision judgment be entered reversing the judgment of the Court of First Instance of the City of Manila, Philippine Islands, which judgment so reversed is hereto attached, and hereby petitions the said Court for an order allowing said plaintiff to prosecute an appeal from said decree to the Supreme Court of the United States, under and according to the laws of Congress and statutes of the United States in such case made and provided.

This petition is based upon the record of said cause in this Court and upon the ground that in said action the statutes and treaties of the United States are involved, and for the further reasons more particularly specified in the assignment of errors on file herein.

HAUSSERMANN & COHN,
Pp. CHARLES C. COHN.
Attorneys for Plaintiff and Appellees.

101 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RICARDO AGUADO, Plaintiff and Appellee,
vs.
CITY OF MANILA, Defendant and Appellant.

The plaintiff, praying an appeal from the final decree of this Court to the Supreme Court of the United States, assigns for error:

First. The Court erred in refusing to hold that the Ayuntamiento de Manila was the trustee and administrator of the Carriedo water works and as such trustee was responsible for all the debts created or contracted in the administration of such works.

Second. The Court erred in finding that the contracts upon which plaintiff relies for recovery in no way indicate that the Ayuntamiento de Manila made said contracts as trustee, nor in a representative capacity, but, upon the contrary, the contracts themselves show that they were made by the Ayuntamiento de Manila with the assignor of the present plaintiff as the Ayuntamiento de Manila and not as trustee or agent.

Third. The Court erred in finding that the contracts in question were not made by the Ayuntamiento de Manila as the trustee and administrator of the Carriedo water works and funds.

Fourth. The Court erred in holding that the contracts in question were made by the Ayuntamiento de Manila in its corporate capacity simply and not in a representative capacity as trustee or agent.

Fifth. The Court erred in holding that the City of Manila is not liable for the sums due and owing upon said contracts.

Sixth. The Court erred in holding that the plaintiff cannot recover out of the funds in the possession and control of the City of

102 Manila, known as the Carriedo Water Works and Funds, the amounts due and owing unto plaintiff upon the contracts herein sued upon.

Seventh. The Court erred in holding that the contracts herein in question are not governed by the terms and conditions of the Treaty of Paris of December 10, 1898.

Eighth. The Court erred in refusing to hold that the rights acquired by plaintiff under and by virtue of the contracts herein in question are vested rights assured, confirmed and guaranteed respect by the said Treaty of Paris of December 10, 1898.

Ninth. The Court erred in reversing the judgment of the Court of First Instance of the City of Manila rendered herein.

Tenth. The Court erred in refusing to order judgment herein in favor of the plaintiff and against the City of Manila as prayed.

Eleventh. The Court erred in refusing and denying the motion of plaintiff for a rehearing herein.

Wherefore plaintiff prays that the decree of said Supreme Court of the Philippine Islands be reversed.

(Signed)

HAUSSERMANN & COHN,

Attorneys for Plaintiff.

103 UNITED STATES OF AMERICA,
Philippine Islands:

Supreme Court of the Philippines, Clerk's Office. Filed Jul- 1, 1908, — a. m. R.

In the Supreme Court of the Philippine Islands.

RICARDO AGUADO, Plaintiff and Appellee,
vs.

THE CITY OF MANILA, Administrator of the Carriedo Waterworks and Funds, Defendant and Appellant.

To the Clerk of the Supreme Court of the Philippine Islands:

On petition of counsel for plaintiff and appellee it is hereby ordered that an appeal to the Supreme Court of the United States of American from the final decree and judgment heretofore filed and entered herein be, and the same hereby is, allowed, and that a certified copy of the record, testimony, stipulation and all proceedings herein be forthwith transmitted to said Supreme Court of the United States of America.

It is further ordered that a bond on appeal, fixed at the sum of \$500.00, United States Currency, for costs and damages on appeal, be given and made by said plaintiff.

Given at Manila, P. I., July 2nd, 1908.

FLORENTINO TORRES,

*Justice of the Supreme Court
of the Philippine Islands.*

104 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

RICARDO AGUADO, Plaintiff and Appellee,
vs.

THE CITY OF MANILA, Administrator of the Carriedo Waterworks
and Funds, Defendant and Appellant.

Know all men by these presents that we, Ricardo Aguado as principal, and Faustino Prospero and Manuel R. Vergara as sureties, are held and firmly bound unto the City of Manila in the full and just sum of Five Hundred Dollars (\$500.00), United States Currency, to be paid to said City of Manila, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of July in the year of our Lord 1908.

Whereas lately at a session of the Supreme Court of the Philippine Islands, in a suit pending in said court between Ricardo Aguado, plaintiff and appellee, against the City of Manila, as administrator of the Carriedo Waterworks and funds, defendant and appellant, a judgment and decree was rendered against the said Ricardo Aguado, and the said Ricardo Aguado having obtained from said court an order allowing an appeal to the United States Supreme Court to reverse the decree and judgment of the aforesaid suit:

Now, the condition of the above obligation is such that
105 if the said Ricardo Aguado shall prosecute the said appeal to effect, and shall answer all damages and costs that may be awarded against him if he fails to make his plea good, then the above obligation is to be void, otherwise to remain in full force and effect.

(S'g'd)

RICARDO AGUADO.
FAUSTINO PROSPERO.
MANUEL R. VERGARA.

"

Signed and sealed in the presence of

(S'g'd) JUAN RIGO,
" APOLONIO SANTOS,

Witnesses.

Subscribed and sworn to before me this 21st day of July, 1908 at Manila, P. I., by Ricardo Aguado and Faustino Prospero who exhibited personal cedula Nos. F-129798 and F-1322651, issued at Manila, January 20 and March 10, 1908 and Manuel Vergara No. F-1124574, issued at Bacolor, Pampanga, March 30, 1908.

[SEAL.]

(S'g'd)

JESUS OBIETA,
Notary Public.

Sufficiency of sureties on the foregoing bond approved this 14th day of July, 1908.

(S'g'd)

C. S. ARELLANO,
*Justice of the Supreme Court
of the Philippine Islands.*

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 14th day of July, 1908.

(S'g'd)

J. E. BLANCO,
*Clerk of the Supreme Court
of the Philippine Islands.*

106

3282.

Supreme Court of the Philippines, Clerk's Office. Filed Jan. 16, 1909, 10 a. m. R.

The United States of America to The City of Manila, Defendant and Appellee, and Modesto Reyes, its Attorney.

You are hereby cited and admonished to appear at the Supreme Court of the United States to be holden at the City of Washington on the 15th day of May 1909, next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the United States, wherein Ricardo Aguado is plaintiff in error, and the City of Manila, as the Administrator of the Carriedo Waterworks and funds, is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and speedy justice done to him in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 15th day of Jan. in the year of our Lord one thousand nine hundred and nine.

[Seal Corte Suprema, Islas Filipinas.]

C. S. ARELLANO,
*Chief Justice of the Supreme Court
of the Philippine Islands.*

Receipt of the above citation is hereby admitted and service thereof accepted this 16 day of Jan. 1909.

MODESTO REYES.

107

3282.

Supreme Court of the Philippines. Clerk's Office. Filed Feb. 10, 1909, 3.37 p. m. R.

UNITED STATES OF AMERICA,
Philippine Island:

In the Supreme Court of the Philippine Islands.

RICARDO AGUADO, Plaintiff and Appellant,

vs.

CITY OF MANILA, Defendant and Appellee.

Stipulation.

It is hereby stipulated and agreed by and between the undersigned counsel for and on behalf of the respective parties in the above entitled cause, that the foregoing is a full, complete and correct record of the proceedings had in said cause and that the same is sufficient for the determination of said cause on appeal to the Supreme Court of the United States.

Manila, P. I., 10th day of February A. D., 1909.

HAUSSERMANN & COHN,

Pp. CHARLES C. COHN,

Attorneys for Plaintiff and Appellant.

MANUEL CAMUS,

Attorneys for Defendant and Appellee.

108 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, J. E. Blanco, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing one hundred and six pages of typewritten matter constitute a true and correct transcript of so much of the record and proceedings in Case No. 3282 of said Court, entitled "Ricardo Aguado, plaintiff and appellee, versus The City of Manila, Administrator of the Carriedo Waterworks and funds, defendant and appellant," as, according to the attached stipulation by counsel, shall be considered a complete and sufficient record of all matters necessary for a final determination by the Supreme Court of the United States of the questions of law involved in said cause.

Witness my hand and the seal of the Supreme Court of the Philippine Islands, this eleventh day of February, 1909.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,

Clerk Supreme Court of the Philippine Islands.

109 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

January 31, 1908. Judgment Book No. 5, p. —. File No. 3282.

Judgment.

RICARDO AGUADO, Plaintiff and Appellee,
versus

THE CITY OF MANILA, Administrator of the Carriedo Waterworks
and Funds, Defendant and Appellant.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on ninth day of January, A. D. nineteen hundred and eight;

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the twenty seventh day of March, nineteen hundred and six, and from which the above entitled appeal was taken, be, and the same is hereby, reversed, without special order as to costs.

It is further ordered that ——— recover from ——— the sum of P——, as costs.

(Signed)

J. E. BLANCO,
*Clerk of the Supreme Court
of the Philippine Islands.*

THE UNITED STATES OF AMERICA.

Supreme Court of the Philippine Islands, ss:

I, J. E. Blanco, Clerk of the above-entitled Court, do hereby certify that I have examined the foregoing document, and that I have compared the same with the original on file in my office, and that the same is a true and correct copy thereof.

In witness whereof I have hereunto signed my name and affixed the seal of this Court this third day of May, nineteen hundred and nine.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
*Clerk of the Supreme Court
of the Philippine Islands.*

[Endorsed:] 433—09/21632.

Endorsed on cover: File No. 21,632. Philippine Islands supreme court. Term No. 207. Ricardo Aguado, appellant, vs. The City of Manila. Filed April 27th, 1909. File No. 21,632.



18
Office Supreme Court, U. S.
FILED.

OCT 20 1910

JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 207.

RICARDO AGUADO,
Appellant,

vs.

THE CITY OF MANILA.

Appeal from the
Supreme Court of the
Philippine Islands.

~~Justice~~ MOTION TO ADVANCE.

To the Honorable ~~Judges~~ Justices of the Supreme Court of the United States:

Now comes RICARDO AGUADO, the appellant in the above-entitled cause, and respectfully moves this Honorable Court to advance this cause upon the docket and set it down for hearing together with the case of Verisimo Vasquez Vilas, plaintiff-in-error and appellant, *vs.* The City of Manila, No. 53 upon the docket of this Court, and the case of Esperanza Otero Trigas and others, plaintiffs-in-error and appellants, *vs.* The City of Manila, No. 54 upon the docket of this Court, upon the ground that the question at issue in this cause is identical with the question at issue in Nos. 53 and 54 above-mentioned and that such question involves the construction of the Treaty of Paris between the United States and the Kingdom of Spain and its effect upon the rights and obligations of the City of Manila and the other municipalities in the Philippine Islands and other possessions acquired by the United States from Spain pursuant to said Treaty of Paris.

In the case at bar, the action was brought against the City of Manila as trustee of a certain fund formerly held by the old City of Manila, then known as the Ayuntamiento de Manila, for the maintenance of its water works, which fund and water works had passed into the possession and control of the present City of Manila. The appellant had entered into a contract with the former City of Manila for the supply to it of coal for use in its water works and the action was brought to recover the purchase price of certain coal so sold and also a deposit made by the appellant as a guarantee for the performance of his contract, and to impress a trust therefor upon the fund so held by the City of Manila. The Supreme Court of the Philippine Islands, reversing the Court of First Instance of the City of Manila, held that in its dealings with the appellant the old Ayuntamiento de Manila acted governmentally and not as trustee of property; that its governmental powers ceased with the extinction of Spanish sovereignty; that the present City of Manila is not the successor of the Ayuntamiento de Manila, but a new governmental agency, and is not liable for any of the obligations of the Ayuntamiento de Manila. The appellant contends that, in all its relations to property, the present City of Manila necessarily has succeeded to both the rights and obligations of the old Ayuntamiento de Manila and that the judgment appealed from violates a vested right of property in the appellant protected by the Treaty of Paris. This question of the legal status of municipalities in the new possessions, reorganized since they have passed under the control of the United States, is necessarily one of great public importance.

In the Vilas case, No. 53, the action was brought by the appellant to recover a sum of money deposited by him with the former City of Manila as a guarantee for the fulfillment on his part of a contract undertaken by him for the collection of certain taxes. This action was decided against the appellant by the Supreme Court of the Philippine Islands upon the authority of its decision in

the Aguado case, being the cause now sought to be advanced.

In the Trigas case, No. 54, the action was brought by the appellant against the City of Manila for work done and a deposit made in connection with the water works. This also was decided against the appellant on the authority of the Aguado case.

The decision by this Court of the Vilas and Trigas cases will thus be determinative of its decision in the case at bar, and this appellant respectfully prays that he may be heard upon the argument of the questions involved in said cases and that this cause be advanced accordingly.

We are authorized to state that, on behalf of the Government, the Attorney-General makes no objection to advancing this cause as prayed.

Respectfully submitted this 24th day of October, 1910.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for Appellant,
2 Rector St., N. Y.



Office Supreme Court, U. S.
FILED.

NOV 28 1910

JAMES H. McKENNEY,

Supreme Court of the United States,

OCTOBER TERM, 1910.

No. 207.

RICARDO AGUADO,
Appellant,

vs.

THE CITY OF MANILA.

Appeal from the
Supreme Court of the
Philippine Islands.

MOTION TO ADVANCE.

To the Honorable Justices of the Supreme Court of the United States:

NOW comes RICARDO AGUADO, the appellant in the above-entitled cause, and respectfully moves this Honorable Court to advance this cause upon the docket together with the case of Verisimo Vasquez Vilas, plaintiff-in-error and appellant, *vs.* The City of Manila, No. 53 upon the docket of this Court, and the case of Esperanza Otero Trigas and others, plaintiffs-in-error and appellants, *vs.* The City of Manila, No. 54 upon the docket of this Court (both of which causes were heretofore assigned for hearing with this cause), upon the ground that the question at issue in said causes involves the construction of the Treaty of Paris between the United States and the Kingdom of Spain and its effect upon the rights and obligations of the City of Manila and the other municipalities in the Philippine Islands and other possessions acquired by the United States from Spain, pursuant to said Treaty of Paris.

In the case at bar, the action was brought against the City of Manila as trustee of a certain fund formerly held by the City of Manila, then known as the Ayuntamiento de Manila, for the maintenance of its water works, which fund and water works had passed into the possession and control of the present City of Manila. The appellant had entered into a contract with the former City of Manila for the supply to it of coal for use in its water works and the action was brought to recover the purchase price of certain coal so sold and also a deposit made by the appellant as a guarantee for the performance of his contract, and to impress a trust therefor upon the fund so held by the City of Manila. The Supreme Court of the Philippine Islands, reversing the Court of First Instance of the City of Manila, held that in its dealings with the appellant the old Ayuntamiento de Manila acted governmentally and not as trustee of property; that its governmental powers ceased with the extinction of Spanish sovereignty; that the present City of Manila is not the successor of the Ayuntamiento de Manila, but a new governmental agency, and is not liable for any of the obligations of the Ayuntamiento de Manila. The appellant contends that, in all its relations to property, the present City of Manila necessarily has succeeded to both the rights and the obligations of the old Ayuntamiento de Manila and that the judgment appealed from violates a vested right of property in the appellant protected by the Treaty of Paris.

In the Vilas case, No. 53, the action was brought by the appellant to recover a sum of money deposited by him with the former City of Manila as a guarantee for the fulfillment on his part of a contract undertaken by him for the collection of certain taxes. This action was decided against the appellant by the Supreme Court of the Philippine Islands upon the authority of its decision in the case at bar.

In the Trigas case, No. 54, the action was brought by the appellants against the City of Manila for work done

and a deposit made in connection with the water works. This also was decided against the appellants on the authority of the case at bar.

The said causes Nos. 53 and 54 were upon November 7th, 1910, postponed, and assigned for hearing together with the case at bar, upon motion of Counsel for the City of Manila, defendant-in-error and appellee, upon the ground that the question at issue in said causes is identical with the question at issue in this cause, and that the decision of this Court in each of the three cases will determine the same questions.

The City of Manila is represented in all three causes by the Hon. Paul Charlton of the Insular Bureau of the War Department, and all three cases are, in effect, cases in which the United States are concerned. The question involved, namely, the legal status of municipalities in the new possessions of the United States, reorganized since they have passed under the control of this country, is necessarily a matter of great public importance and general public interest.

We are authorized to state that, on behalf of the Government, Counsel for the City of Manila concurs in this application, and that counsel for the appellants and plaintiffs in error in Nos. 53 and 54 likewise concur.

Respectfully submitted this 28th day of November, 1910.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for Appellant,
No. 2 Rector Street.

THE JOURNAL OF THE

ROYAL SOCIETY OF MEDICINE

Office Supreme Court, U. S.
FILED.

NOV 7 1910

JAMES H. McKENNEY,

CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1910.

No. 53.

VERISIMO VASQUEZ VILAS, PLAINTIFF
in error and appellant,

vs.

THE CITY OF MANILA.

No. 54.

ESPERANZA OTERO TRIGAS AND OTHERS,
plaintiffs in error and appellants,

vs.

THE CITY OF MANILA.

Appeals from the
Supreme Court of
the Philippine Is-
lands.

MOTION TO POSTPONE AND CONSOLIDATE.

To the Honorable the Justices of the Supreme Court of the
United States:

Now comes Verisimo Vasquez Vilas, plaintiff in error and appellant above, and Esperanza Otero Trigas and others, plaintiffs in error and appellants above, and respectfully move this Honorable Court to postpone these causes upon the docket and to set them down for hearing, together with the case of Ricardo Aguado, appellant, the City of Manila, No. 207 on the docket of this court, upon the ground that the question at issue in these causes is identical with the questions at issue in No. 207 above mentioned, and that the question involves the construction of the Treaty of Paris between the United States and the Kingdom of Spain, and its effect upon the rights and obligations of the City of Manila and the other municipalities in the Philippine Islands, and other possessions acquired by the United States from Spain, pursuant to said Treaty of Paris.

In the cases at bar, the actions were brought against the City of Manila as the successor of the Ayuntamiento de Manila, as such municipality existed under the Spanish régime and before the said Treaty of Paris, and were based upon liabilities alleged to exist on the part of the Ayuntamiento de Manila in

favor of said plaintiffs in error and appellants, and as such became obligations of the City of Manila. The same question is involved in the case of Ricardo Aguado, appellant, *vs.* The City of Manila, No. 207 on the docket of this court. In each case the decision of the Supreme Court of the Philippine Islands was adverse to the contention of plaintiffs in error and appellants, the said court holding that the present municipality, the City of Manila, is not the successor of the Ayuntamiento de Manila, but a new governmental agency and is not liable for any of the obligations of the Ayuntamiento de Manila. The contention of the plaintiffs in error and appellants, in above cases, is that the present City of Manila necessarily has succeeded to both the rights and obligations of the Ayuntamiento de Manila, and that the judgments appealed from violated a vested right of property in the plaintiffs in error and appellants protected by the Treaty of Paris.

The decision of this court in each of the three cases will determine the same questions, and it is respectfully prayed that the same may be heard together, upon the argument of the questions involved therein, and that the hearing of the Vilas and Trigas cases may be postponed and continued until the Aguado case is reached upon the docket for argument.

I am authorized to state that no objection is made on behalf of the plaintiffs in error and appellants to the postponement and consolidation of the cases as prayed.

Respectfully submitted this 7th day of November, 1910.

PAUL CHARLTON,
Counsel for The City of Manila, defendant in error
and appellee, in Nos. 53, 54, and 207.
Room No. 240, War Department, Washington, D. C.

O

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

1888

1889

1890

1891

1892

1893

1894

1895

1896

1897

1898

1899

1900

1901

1902

1903

1904

1905

1906

1907

1908

1909

1910

1911

1912

1913

1914

1915

1916

1917

201

201
10 1
85 11

21

22

23

24

25

26

27

28

29

30

31

Supreme Court of the United States.

OCTOBER TERM 1910.

Office Supreme Court U. S.
FILED

JAN 20 1911

No. 53.

VERISIMO VASQUEZ VILAS,
Plaintiff in Error and Appellant,

vs.

THE CITY OF MANILA,

No. 54.

ESPERANZA OTERO TRIGAS and others,
Plaintiffs in Error and Appellants,

vs.

THE CITY OF MANILA,

No. 207.

RICARDO AGUADO,
Appellant,

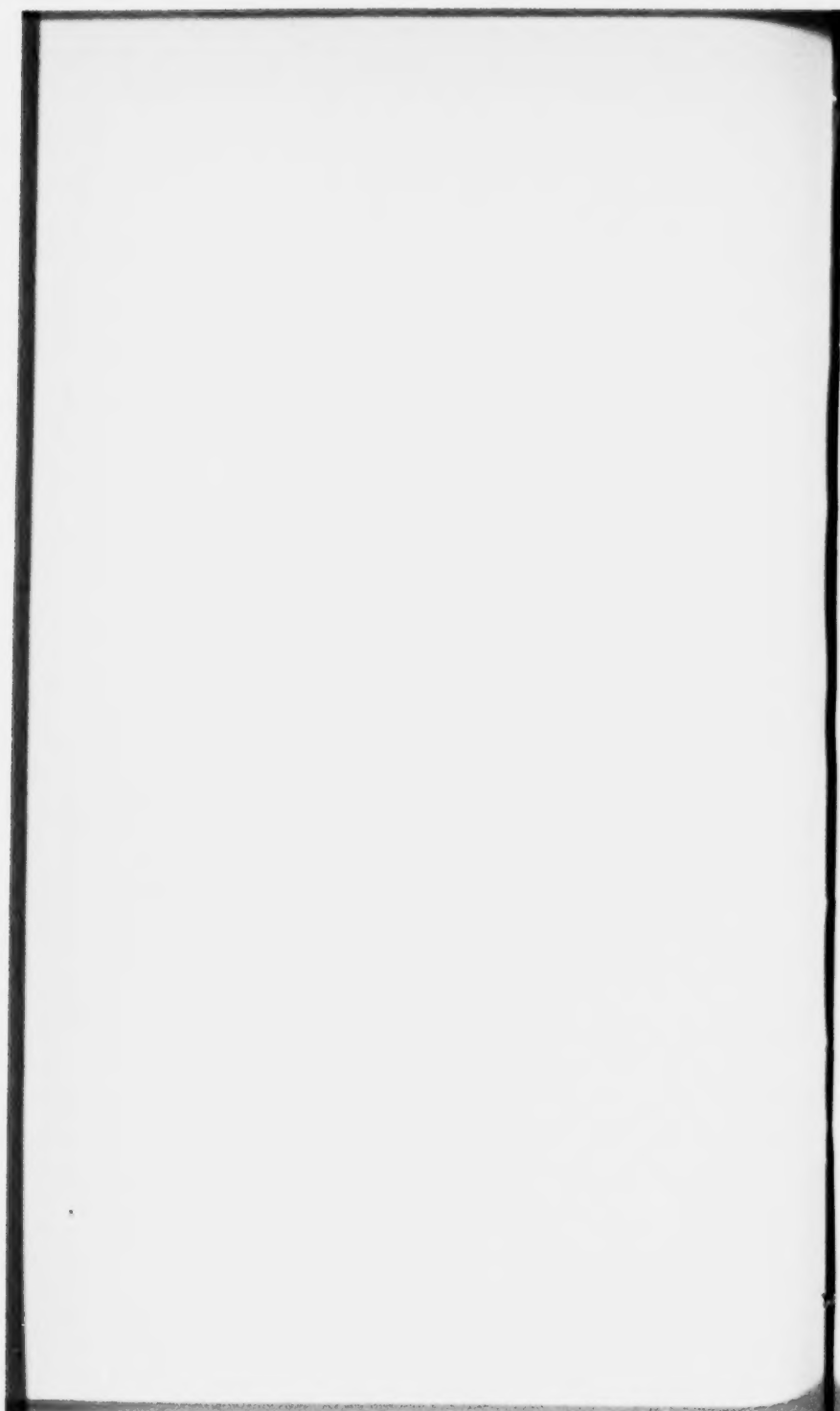
vs.

THE CITY OF MANILA,

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFFS IN ERROR AND APPELLANTS.

PAUL FULLER,
FREDERIC R. COUDERT,
HARRY WESTON VAN DYKE,
HOWARD THAYER KINGSBURY,
Counsel for Plaintiffs in Error and Appellants,
2 Rector Street, N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1910.

VERISIMO VASQUEZ VILAS,
Plaintiff in Error and
Appellant,

vs.

THE CITY OF MANILA.

No. 53

ESPERANZA OTERO TRIGAS AND
OTHERS,
Plaintiffs in Error and
Appellants,

vs.

THE CITY OF MANILA.

No. 54.

RICARDO AGUADO,
Appellant,

vs.

THE CITY OF MANILA.

No. 207.

IN ERROR TO AND APPEAL FROM THE SUPREME
COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFFS IN ERROR AND APPELLANTS.

Introductory Statement.

These are three appeals which have been ordered by this Court to be heard together. The Aguado case, although the latest on the docket here, was the one first begun and first decided below and the decisions in the other two cases followed the decision therein. The proceedings therein will therefore be first stated.

The Aguado case was brought by the plaintiff Aguado against the City of Manila to enforce a claim for the purchase price of coal sold in 1897 to the City of Manila, as existing under Spanish sovereignty, for use in the Carriedo Water Works, and for a deposit made in connection with the contract for the supply of coal, and to impress a trust therefor upon certain specific funds held by the City of Manila as trustee and administrator of the Carriedo Water Works, and to obtain payment out of such special funds. The action was begun in the Court of First Instance of the City of Manila on April 28th, 1903. The complaint was twice amended, the defendant answered the third complaint, and the action was tried upon an agreed statement of facts on November 7th, 1905. The Court of First Instance decided in favor of plaintiff and on March 27th, 1906, awarded judgment substantially as prayed in the complaint. The City of Manila appealed from this judgment to the Supreme Court of the Philippine Islands, and on January 9th, 1908, that Court reversed the judgment below without granting any new trial, thus finally disposing of

the case. Judgment of reversal was entered on January 31st, 1908. From this judgment of the Supreme Court of the Philippine Islands the appeal in No. 207 was taken to this Court on July 2nd, 1908.

In the Vilas case (No. 53), the action was brought by the plaintiff Vilas against the City of Manila to recover a sum of money deposited by the plaintiff with the City of Manila, as existing under Spanish sovereignty, as a guarantee for the performance on his part of a contract undertaken by him for the collection of certain taxes. This action was begun on August 26th, 1904. The defendant demurred upon the ground that the facts alleged were not sufficient to constitute a cause of action. The demurrer was sustained in the Court of First Instance on March 26th, 1906, and the complaint dismissed on June 5th, 1906. The plaintiff appealed to the Supreme Court of the Philippine Islands, and on January 9th, 1908, that Court affirmed the judgment below, expressly following its decision rendered on the same day in the Aguado case. The case was then brought to this Court for review both by writ of error and appeal, both having been allowed on January 28th, 1908.

In the Trigas case (No. 54), the action was brought by the plaintiffs against the City of Manila for work done and a deposit made by the plaintiff's testator under a contract with the City of Manila, as existing under Spanish sovereignty, relating to the City water system. The action was begun on August 25th, 1904; the defendant demurred on several grounds and the demurrer was sustained by the Court of First Instance upon the single

ground that the complaint did not state facts sufficient to constitute a cause of action. This decision was rendered on October 11th, 1906, and on October 18th, 1906, final judgment was entered dismissing the complaint. The plaintiffs appealed from such judgment to the Supreme Court of the Philippine Islands, which, on January 13th, 1908, affirmed the judgment below, expressly following its decision in the Aguado case. Judgment of affirmance was entered on February 4th, 1908, and the cause was then brought to this Court by writ of error and appeal, both of which were allowed on February 28th, 1908.

The basic question in all three cases is simply this:

Is the City of Manila, as at present constituted, liable for the obligations of the City incurred prior to the cession to the United States?

The Court below has expressly held that it is not, but is a new entity, succeeding to the property of the former municipal organization, but freed from its liabilities. It is against this seemingly anomalous and quite unprecedented doctrine of municipal debt-dodging that our argument herein is directed.

Statement of Facts.

As the Aguado case was tried upon an agreed statement of facts and as the other two cases were decided upon demurrer, there has been no controversy over the facts at any stage of the litigation. The facts all appear in the agreed statement and the pleadings, as supplemented by facts of public

history and the Spanish law, of which the Court will take judicial notice. (*Ponce vs. Roman Catholic Church*, 210 U. S., 296, 309.) As the facts in the Aguado case are the most complicated, they will be stated first.

On June 11th, 1897, one Muñoz, the plaintiff's assignor, entered into a written agreement with the Municipal Government of the City of Manila for the supply of 1,600 tons of coal to the Carriedo Water Works of the City, a municipal institution originally founded and endowed by Don Francisco Carriedo in the year 1734 (See Rec., pp. 9, 15, 30). Prior to April 1st, 1898, Muñoz delivered a part of the coal so contracted for and received payment at the contract price. Between April 1st and April 30th, 1898, Muñoz delivered the balance (259.70 tons) of the coal called for by the contract, but has never received payment therefor (Rec., pp. 9-10). The amount payable, at the contract price, was 3116.40 pesos Mexican. On June 30th, 1898, plaintiff delivered to the municipality a further quantity of coal outside of the contract, the reasonable value of which was 585 pesos Mexican (Rec., p. 11). This coal also has never been paid for. Prior to the execution of the contract and to secure its performance by Muñoz, if made, Muñoz, on or about June 1st, 1897, deposited the sum of 1,920 pesos with the municipality (Rec., pp. 11, 32).

On August 13th, 1898, the municipal authorities of Manila were forcibly suspended in the exercise of their functions by the American conquest and occupation, and from that date until August 6th, 1901, the affairs of the municipality were administered by the military authorities of the United States Government (Rec., p. 10). On August 6th,

1901, the government of Manila was re-organized by the Philippine Commission and a new Charter granted to the City (Rec., p. 10, Act No. 183, Philippine Commission).

In February, 1899, Muñoz assigned to the plaintiff all his right, title and interest in and to the amount due to him for the delivery of the balance of the coal under the contract and also in and to the sum deposited by him to secure the performance of the contract (Rec., pp. 10-11).

Due demand has been made by plaintiff or his assignor upon the municipal authorities of the City of Manila, both as organized under Spanish rule and as at present constituted, and also upon the military authorities during the period while they were in control, but the entire amount claimed remains due and unpaid (Rec., pp. 10-11).

The facts in regard to the Carriedo Water Works, so far as they appear material, are briefly as follows:—

In the year 1734, Don Francisco Carriedo y Paredo bequeathed to the City of Manila the sum of 10,000 pesos for the building of an aqueduct and the establishment of City Water Works, to be kept as a separate fund, apart from all other funds of the City (Rec., pp. 15, 16). After this sum was paid to the City, suit was brought by the heirs of Carriedo for its recovery. This litigation was ultimately decided in favor of the City by the Supreme Council of the Indies in 1782 (Rec., p. 19). In 1806, the Board of Consolidacion de Vales Reales called upon the municipality to pay over the Carriedo Fund to the Royal Treasury. This was contested by the municipality, and in 1809 the fund was restored by a Royal Order to the municipality (Rec., p. 20). At this time the fund amounted to 32,187 pesos. By 1867, it

had grown to 177,853 pesos and was then supplemented by a special tax upon meat. In 1877, the Crown offered to contribute a further sum of 100,000 pesos, but this was declined by the municipality in order to preserve intact the original scheme of Carriedo and the glory due to him therefor (Rec., pp. 22-23). The Water Works appear to have been inaugurated in 1878 (Rec., p. 22), and completed in 1884 (Rec., p. 13), and are still in the possession of and operated by the City of Manila, which also still holds certain securities of the value of over 18,000 pesos to the credit of the Carriedo Fund (Rec., p. 12).

In the Vilas case, the following facts appear by the complaint and are to be deemed admitted by the demurrer. On January 30th, 1897, the City of Manila awarded to the plaintiff a contract for the collection of certain municipal taxes for a specified annual compensation, for a period of three years. To secure the performance of this contract on his part the plaintiff deposited with the City of Manila on February 10th, 1897, the sum of \$4,920 Mexican. The plaintiff performed his obligations under the contract from April, 1897, to June, 1898, and was thereafter prevented from performance by the siege and surrender of the City and the American occupation, whereby all pre-existing contracts for the collection of taxes were cancelled and abrogated. The City of Manila, as at present organized, having succeeded to the rights and obligations of the City of Manila, as existing under Spanish sovereignty, has failed and refused to return to the plaintiff the deposit above mentioned (Rec., pp. 1-2).

In the Trigas case the following facts appear by the pleadings. On July 29th, 1896, the City of Manila entered into a contract with one Francisco

Coma, acting on behalf and in the interest of one Manuel Martinez Lopez, the plaintiff's testator, for the enlargement and improvement of the Water System of the City of Manila for the agreed sum of \$39,978 Mexican. Martinez entered upon the execution of the contract and continued its performance until the month of June, 1898. By that time he had received from the City of Manila, on account of said contract, the sum of \$25,657.96. On April 30th, 1898, the City of Manila, through its engineer in charge of the work, issued to Martinez its certificate for the sum of \$2,400.75 on account of work performed under the contract in April, 1898, and on May 31st, 1898, a further certificate for \$1,665.01 for work performed under the contract in May, 1898 (Rec., p. 2). Under the terms of the contract Martinez was required to deposit with the City of Manila the total sum of \$3,996.80, being 10% of the contract price. Of this amount Martinez deposited from time to time, as the same was exacted of him, the amount of \$3,153.60. The City of Manila also reserved of the value of the work done and certified for in April and May, 1898, the further sums of \$240.07 and \$166.50 respectively, making the total amount actually deposited by Martinez, or specifically reserved by the City of Manila, the sum of \$3,560.17 (Rec., pp. 2, 3). The work actually performed by Martinez was of the actual and real value of \$4,000 over and above the total amount of the payments made and certificates issued, and such work was accepted and utilized by the City of Manila, both as organized under Spanish sovereignty and as at present constituted (Rec., p. 3). On June 30th, 1898, the officials of the City of

Manila abandoned to the insurgents the pumping works of the Water System where Martinez was performing his contract, first setting fire to the temporary buildings which had been constructed by Martinez for the prosecution of his work under the contract. This resulted in the destruction of tools and materials belonging to Martinez of the actual value of \$3,765.23 (Rec., p. 4). This action on the part of the officials also rendered impossible the further performance of the contract by Martinez. Martinez died in 1898, leaving a will whereby the plaintiffs were constituted as his sole and universal heirs, and they thereby became the owners of the claim in suit. Due demand was made by Martinez in his lifetime upon the City of Manila as then organized, and by the plaintiffs, since his death, upon the City of Manila as at present constituted, but no part of the claim has been paid. The items of the claim, as summarized in the demand of judgment (Rec., p. 5) are as follows:—

Amount of Deposit.....	\$3,153.60
Amount of Certificates for April and May, 1898	4,065.31
Work Performed, but Not Certified...	4,000.00
Tools and Materials Destroyed.....	3,765.23
Total	\$14,984.14

Historical Note.

The existence of Manila as an actual community antedates the Spanish conquest. In a contemporary account of the conquest of Luzon by Legazpi in 1570, written at Manila in 1572, and

contained in Blair & Robertson's Documentary History of the Philippines, the chronicler speaks of the "port and village of Manila" as being reputed to be "large and very strong". He adds, "in comparison with the natives of this land, the inhabitants of Manila were powerful, for they had twelve pieces of small and inferior artillery and a few culverins." He had previously heard "that there were in all 80,000 Moros in this Village of Manila," but he was inclined to estimate the number himself at nearer 2,000. In the attack in 1570, the Village was burned, but it was immediately re-built, and on May 16th, 1571, the Governor took formal possession of the place. (See Doc. Hist. Phil., Vol. 3, pages 148-150, 153). Its municipal organization speedily followed. This is the official record thereof, dated June 19, 1572:

"I, Hernando Riquel, Notary in Chief and Governmental Notary for his Majesty in these Islands of the West, do hereby certify most solemnly, to whomsoever shall see this present that the most illustrious Miguel Lopez de Legazpi, Governor and Captain General in these Islands, gave the title of City to this Colony of Manila, on the 3rd day of the month of June of the past year, seventy-one; and on the twenty-fourth day of the same month and year, which was St. John's day, he appointed two *alcaldes* in ordinary, one *alguacil-mayor*, and twelve *regidores*, and on the day following he appointed one notary for the *Cabildo* and two notaries public for the Court of the said *Alcaldes*. * * *"

(See Ibid., Vol. 3, page 173.)

On June 21st, 1574, the title of "Illustrious and Ever Loyal (Insigne y Siempre Leal) City of Manila" was bestowed upon it by royal grant, (Ibid., Vol. 3, page 250), and on March 20th, 1596, it received the grant of a coat of arms. (Ibid., Vol. 9, pages 211-215). All this was in strict conformity with the Laws of the Indies, which provided as follows:

Laws of the Indies, Book IV., Title VII., Law II.

"THAT HAVING CHOSEN THE SITE, THE GOVERNOR SHALL DECLARE WHETHER IT IS TO BE A CITY, TOWN OR VILLAGE AND THUS SHALL FORM ITS GOVERNMENT.

Having chosen the country, province and place in which a new settlement is to be made and having ascertained the conveniences and advantages which it may have, the Governor in whose district it is situated or confined shall declare whether the locality which is to be settled is to be a City, Town or Village, and conformably to what shall be thus declared there shall be constituted the Council, Government and Officials thereof, so that if it is to be a Metropolitan City it shall have a Judge with the title of Adelantado or Alcalde Mayor or Corregidor or Ordinary Alcalde who shall exercise joint jurisdiction and, jointly with the governing body, shall conduct the administration of the Government: Two or three officers of the royal Revenue, twelve Regidores, two Bailiffs, two Jurats of each parish, one Attorney General, one Mayor-domo, one Clerk of the Council, two Public Scriveners, one Clerk of Mines and Registers, one Town Crier, one Superintendent of the Market, two Gate-keepers; and if the City is diocesan or suffragan, eight Regidores and the other permanent officials: For Towns and Villages an Ordinary Al-

calde, four Regidores, one Sheriff, one Clerk of the Council, one Public Scrivener, and one Mayordomo."

(Ordinance 43 of Philip the Second.)

The municipal organization of the City of Manila was especially protected by the following provisions:

Laws of the Indies, Book IV., Title X, Law VII.

"THAT THE GOVERNOR OF THE PHILIPPINES SHALL APPOINT FOR THE PRESENT THE MUNICIPAL COUNCILS AND SHALL NOT REMOVE THOSE WHO ARE APPOINTED.

"The Governor and Captain General of the Philippines shall appoint for the present the municipal authorities of the City of Manila, choosing persons who are suitable, and zealous in the service of God Our Lord and Our Own, and shall not remove them without our special order."

(Philip the Third at Madrid, March 17, 1608).

For a considerable period the municipality proper consisted only of the "Walled City", and its suburbs were separately governed. Various changes and extensions were made in its boundaries from time to time until the suburbs were for the most part included in the municipality. It expressly appears by the pleadings in the cases at bar, that the City, as at present constituted, comprises "in its limits the territory embraced and included within the City of Manila as existing under Spanish sovereignty." (Trigas Rec., p. 4).

The City of Manila was surrendered to the American forces on August 13th, 1898, and the government of the City was conducted by the mil-

itary authorities of the United States until the granting of the present Charter. The military authorities thus came into possession of the funds then in the Treasury of the City, including "all moneys deposited with the said Ayuntamiento as security for the performance of contracts with said Ayuntamiento" (Aguado Rec., p. 12), such as the deposits made by the plaintiffs in these three cases. Some of these deposits were afterwards returned to their owners upon sufficient identification. (See Report of General Otis of August 31st, 1899, War Dep't. Report, 1899, Vol. I, Part 4, pages 37-38). They also came into possession of the still unconsumed balance of the coal supplied by Aguado (Rec., p. 26).

The articles of capitulation concluded with these words:

"This city, its inhabitants * * * and its *private property* of all descriptions are placed under the special safeguard of the faith and honor of the American army."

In President McKinley's instructions of April 7, 1900, to the Philippine Commission, he said, after quoting the foregoing:

"I believe that this pledge has been faithfully kept,"

and charged the Commission

"to labor for the full performance of this obligation" (Phil. Comp. Stat., p. 15).

The Treaty of Paris, made December 10, 1898, by which the Philippine Islands were ceded to the United States, provided among other things as follows:

"Art. VIII. * * * And it is hereby declared that the * * * cession * * * cannot in any respect impair the property or rights

which by law belong to the peaceful possession of property of all kinds of * * * municipalities * * * civic bodies, or any other associations having legal capacity to acquire and possess property."

On July 31st, 1901, the Philippine Commission granted a new Charter to the City of Manila. This now constitutes Chapters 68-75 of the Compilation of the Acts of the Philippine Commission. Its most material portions are as follows:

"Sec. 441. The inhabitants of the *City of Manila* residing within the territory described in the next succeeding section are hereby constituted a municipality, which shall be known as the city of Manila, and by that name shall have perpetual succession, and *shall possess all the rights of property herein granted or heretofore enjoyed and possessed by the city of Manila as organized under Spanish sovereignty.*

"It may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey, and dispose of real and personal property for the general interests of the city, contract and be contracted with, *sue and be sued, and prosecute and defend to final judgment and execution,* and execute all the powers hereinafter conferred."

• • • • •

"Sec. 455. The Board shall take possession of all lands, buildings, offices, books, papers, records, moneys, credits, securities, assets, accounts, or other property or rights belonging to the former city of Manila or pertaining to the business or interests thereof, and subject to the provisions herein set forth shall have control of all its property except the building known as the Ayuntamiento, provision for the occupation and control of which is made in the last

preceding section; shall collect taxes and other revenues, and apply the same in accordance with appropriations, as hereinbefore provided, to the payment of the municipal expenses; shall supervise and control the discharge of official duties by subordinates; shall institute judicial proceedings to recover property and funds of the city wherever found or otherwise to protect the interests of the city, and shall defend all suits against the city."

.

"Sec. 472. All city ordinances and orders in force on July 31st, nineteen hundred and one, and not inconsistent herewith, shall continue in force until they are repealed or modified by ordinances passed in accordance with the provisions of this title."

Specification of Errors.

The errors assigned upon the allowance of the appeals in these three cases may be found at page 54 in the Aguado record, page 14 in the Vilas record, and page 19 in the Trigas record. They may be more briefly summarized as follows:

ERRORS APPLICABLE TO ALL THREE CASES.

(1) The Court erred in giving judgment for the defendant and not for the plaintiff.

(2) The Court erred in holding that the City of Manila as at present organized is not liable for debts incurred by the City of Manila as constituted under Spanish sovereignty.

This ruling of the Court below was in direct violation of the Treaty of Paris.

ERRORS APPLICABLE TO THE AGUADO CASE ALONE.

(1) The Court erred in refusing to hold that the City of Manila was the Trustee and Administrator of the Carriedo Fund and Water Works and as such Trustee responsible for all debts contracted in the administration of such Works.

(2) The Court erred in refusing to hold that the plaintiff was entitled to payment of his claim out of the Fund still held by the City of Manila on account of the Carriedo Water Works.

Brief of the Argument.

The position of the appellants on the principal questions involved in the three cases may be very briefly stated as follows: The City of Manila as constituted under Spanish sovereignty was a juristic person capable of holding property, of contracting obligations and of suing and being sued. Such juristic personality and its consequent rights and liabilities had subsisted since the Sixteenth Century. In respect of the obligations contracted by the City of Manila in connection with the administration of its local business and affairs, the municipality occupied a position analogous to that of a business corporation.

The civil obligations of the municipality were debts of the City and not of the general Government.

When the military forces of the United States took possession of the property of the municipality and undertook its administration, they did so subject to the payment of all obligations then outstanding connected with any of the municipal property of which possession was so taken, or incurred in the

administration of the City's affairs. The Treaty of Paris expressly preserved all property rights of municipalities and other associations having legal capacity (*personalidad juridica*), thus necessarily continuing their corporate existence, without which they obviously could not continue to possess and enjoy their property rights, and also by necessary implication preserving all obligations correlative to such property rights.

In the Organic Act providing for civil government in the Philippine Islands, Congress expressly prohibited the passage of any law by the Philippine Commission impairing the obligation of contracts, thus specifically extending to the Philippine Islands the beneficent provision of the United States Constitution for the protection of such rights. It was thus put beyond the power of the Philippine Commission to pass any Act injuriously affecting outstanding civil obligations due from individuals or other juristic persons such as municipalities.

The Charter granted to the City of Manila by the Philippine Commission did not dissolve or abrogate its former corporate existence or affect adversely its outstanding rights of property or civil obligations; it could not do so without violating both the Treaty and the Organic Act, and it does not by its terms purport or undertake to do so. It merely continued the corporate existence of the City and provided a new frame of government and system of administration therefor. It preserved unimpaired the liability of the City to suit and expressly gave the remedy of execution, besides other methods of enforcing payment of municipal obligations, thus superseding the methods of enforcing payment which were available under the Spanish administrative procedure

before the administrative tribunals now no longer in existence.

In respect to the Carriedo Water Works and the Fund held by the City of Manila for their administration, the City continued through the various changes of government in the position of Trustee, and the property and funds, so held by it, were specifically subject to the satisfaction of obligations contracted by the City with reference to such Water Works.

Upon the facts as admitted by stipulation in the Aguado case and upon the face of the pleadings in the other cases, the plaintiffs were entitled to the relief demanded in the several complaints.

The erroneous character of the judgment of the Philippine Supreme Court appears from a mere statement of its terms. That Court held in the Aguado case, in which the principal opinion below was written:

I. That plaintiff's contract "was made with the old City in its corporate capacity simply and not in a representative capacity as trustee or agent" (p. 49).

II. That when the Spanish Government, on the 11th of April, 1899, ceased to exercise any power or control over the Philippine Islands, "all its agents, including the Ayuntamiento de Manila, also ceased to exist" (p. 50). That "after that date all persons who had rights or obligations pre-existing against such defunct governments were left to their remedies against such defunct governments" (p. 51).

III. That the Treaty of Paris was "a compact between the United States Government and the Crown of Spain and of course the City of Manila could not, if it would, be obligated by any terms of that compact, without

an express authorization on the part of the proper power or authority" (p. 51).

IV. That "the City of Manila is in no way the successor of the Ayuntamiento de Manila in law" (p. 51). "It is an entirely new organization, a new agent of a new principal, and only has such * * * obligations and responsibilities as the new principal has seen fit to * * * impose" * * * and "that the present City of Manila is in no wise responsible to the plaintiff upon the contracts made between its assignor and the old City of Manila" (p. 51).

The decision of the Philippine Supreme Court is based therefore upon the proposition that a municipal corporation is a mere "agent of the State," and that "certainly the general consequences of the death of the principal must follow in its effect upon the authority of the agent;" that "the death of the principal always revokes the agency" (p. 50), so that a change of sovereignty wipes out of existence all municipalities, their property rights and their obligations.

The Court admits one exception, i. e., "when there are no vested rights involved" (p. 51), but considers in the present case only one such possible right, that is, the right of the municipality to survive, as to which it holds: "A municipal corporation has no vested right to exist as such. The State may at any time revoke its charter" (p. 50). "Of course," the Court adds, "the State might by such revocation incur certain moral obligations, but the performance of these obligations would always rest upon the conscience of the law making or charter-granting authority of the State" (p. 50).

These rulings of the Court below are contrary to

- (1) the Civil Law,
- (2) the modern Spanish Law,
- (3) the common Law as applied in a long line of decisions of this Court,
- (4) the Treaty of Paris,
- (5) the Organic Act,
- (6) the present Charter of the City of Manila,

as well as utterly repugnant to the sense of fair dealing and those elementary rules of moral conduct common to all civilized nations, usually termed natural law or justice.

POINT I.

This Court has jurisdiction of the three cases at bar.

As appears from the Statement of Facts, the Brief of the Argument and the Specification of Errors, the plaintiff's claim in each case is squarely based upon the provision of the Treaty of Paris which preserves, unimpaired by the cession, all the property rights of individuals, municipalities and other corporations. If it be contended, as was contended below, that the new Charter of the City of Manila or any other legislation by the Philippine Commission has operated adversely upon plaintiffs' claims, then the provision of the Organic Act "that no law impairing the obligations of contracts shall be enacted," is also involved.

By Section 10 of the Organic Act, this court has jurisdiction

“to review, revise, reverse, modify or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes and proceedings * * * in which the constitution or any statute, treaty, title, right or privilege of the United States is involved” (32 U. S. Stat. p. 695).

These cases involve both a Treaty and a Statute of the United States, and this Court therefore has jurisdiction irrespective of the amount involved.

The Vilas and Trigas cases are ordinary actions at law in the nature of *assumpsit* to recover a sum of money only, and are therefore properly brought here for review by writ of error (See Behn vs. Campbell, 200 U. S. 611, 205 U. S. 403). By way of further precaution, however, an appeal was also sued out, so that in any view of the case the plaintiffs in error and appellants may safely and surely invoke the jurisdiction of this Court. Since no questions of fact are presented for review, it is immaterial which procedure is considered to be applicable.

In the Aguado case the suit is of an equitable nature, since the plaintiff there seeks to trace particular property belonging to a particular fund, impress a trust thereon for his benefit, and obtain payment of his claim, after its establishment, out of this particular fund. This case is therefore properly brought here by appeal (See De La Rama vs. De La Rama, 201 U. S. 303).

It is proper to observe at this point that under the Code of Civil Procedure now in force in the Philippine Islands, just as in the Code States in this country, there is but one form of civil action,

so that the distinctions between legal and equitable procedure, which obtain in the Federal Courts here, have no application, and the real nature of the action must be considered, in order to determine whether it is to be reviewed here as an action at law or a suit in equity (See Philippine Code of Civil Procedure; Act 190, Phil. Com., Section 1; now Section 2403, Phil. Comp. Stat.). It is also to be noted that special judgments requiring the sale of specific property and the application of its proceeds pursuant to the direction of the Court are enforceable by writ of execution, the same as ordinary judgments for the mere payment of money (Ibid., Sec. 446, now Sec. 2878, Phil. Comp. Stat.).

POINT II.

The outstanding obligations of the City of Manila were not impaired by the change of sovereignty, but were preserved by the Treaty and expressly recognized by the United States Government.

The Court below held, in effect, that with the extinction of Spanish sovereignty in the Philippines, the corporate existence of the City of Manila was itself extinguished and its obligations thereby ceased to be binding upon the community under the new sovereign, and under such new form or organization as might be provided for the community. This wholly fails to take into ac-

count the dual character of municipal corporations. A municipal corporation is not only a governmental subdivision; in fact such is not its primary character; it is primarily an association of the members of a particular community for the administration of their local business and affairs in matters largely outside of the sphere of government, as such. Its property rights and its civil obligations attach to it in this latter capacity rather than in its capacity as a governmental agency and in regard to them it is subject to the same rules of law as any other juristic person. It is this recognition of the actual corporate personality of municipalities which is contained in the treaty clause embodying the usual rules of international law and usage as to the continuance of municipal corporations after cession of sovereignty. This rule has been repeatedly recognized by this Court and is part of our law.

The distinction between sovereign rights of government and corporate capacity was clearly set forth by this Court in the recent case of *South Carolina vs. United States*, 199 U. S., 437, at 462, where this Court quoted with approval the following most apposite observations from *Lloyd v. Mayor &c., of New York*, 5 N. Y., 369, 374:

“The corporation of the City of New York possesses two kinds of powers, one governmental and public, and to the extent they are held and exercised, is clothed with sovereignty—the other private, and to the extent they are held and exercised, is a legal individual. The former are given and used for public purposes, the latter for private purposes. While in the exercise of the former the corporation is a municipal government, and while in the exercise of the latter, is a corporate, legal individual.”

This Court in the same case also quoted with approval from *Western Saving Fund Society v. City of Philadelphia*, 31 Pa. St., 175, in which it had been held that "a city supplying gas to the inhabitants acts as a private corporation, and is subject to the same liabilities," as follows:

"The supply of gas light is no more a duty of sovereignty than the supply of water. *
 * * If this power is granted to a borough or city, it is a special private franchise, made as well for the private emolument and advantage of the City as for the public good. *
 * * If the grant was for purposes of private advantage or emolument, though the public may derive a common benefit therefrom, the corporation *quoad hoc* is to be regarded as a private company."

Upon a change of sovereignty undoubtedly the new sovereign has power to change the form of government of the municipalities in the territory which has changed masters, but this power is no greater than the power of any sovereign State to change the form of government of the municipalities of its own creation. The principal limitations upon that power are apparent from the decisions of this Court hereinafter cited. It is unnecessary in the cases at bar to consider whether there are any further limitations; for example whether the sovereign has power to take away the right of corporate existence from a municipality whose juristic personality antedates the sovereign itself. It may well be doubted whether the State of New York could take away the right of municipal corporate existence from the City of New York, which enjoyed such corporate existence under both the Dutch and English Govern-

ments long before the existence of the State of New York as a sovereign power.

In like manner the City of Manila had a corporate existence before the Pilgrims landed at Plymouth Rock; before it would have "entered into the mind of man to conceive" of the future existence of the United States of America, even in the wildest flights of a prophetic imagination. It is most questionable whether, under the rules of international law recognized by all civilized nations, the United States had power to take away from the community inhabiting the City of Manila the right to be a municipal corporation with some power of control over its local property interests, however much the manner for the exercise of such control might be changed or regulated. This, however, is academic, since the United States not only never attempted the strangulation of this prehistoric town, but have always recognized its continued existence, and nowhere more clearly than in the present charter which begins with a reference to "the City of Manila." There has never been an attempt to take away the right of corporate existence from the City of Manila or to impair its property rights; and the continued subsistence of the obligations attached to these property rights follows as an inevitable corollary. The Treaty protects and preserves them, the Organic Act forbids their impairment, and there is nothing in the new Charter which indicates any intention whatever to attempt to infringe these safeguards.

The Court below considered that the debts of the City of Manila were, in effect, debts of the Spanish Government and were therefore not assumed by the United States. The major prem-

iss of this argument is manifestly erroneous. A municipality is not a sovereignty. (See *Metropolitan Railway Co. vs. District of Columbia*, 132 U. S., 1, at p. 9). The debts of a municipality are not the debts of the sovereign in whose territory it is situated. It might as well be claimed that the debts of the City of Washington are part of the national debt of the United States, as that the debts of the City of Manila before the cession were debts of the Kingdom of Spain.

The correct view of the situation was taken by the executive authorities of the United States at an early date, as appears from the proceedings in connection with the Merryweather claim, reported in Magoon on the Law of Civil Government under Military Occupation at pages 407 to 414. In this matter a British firm, known as Merryweather & Sons, presented to the United States Government a claim for the purchase price of fire apparatus supplied to the City of Manila under a contract claimed to have been made with that City prior to the Spanish-American War. The Honorable Elihu Root, then Secretary of War, reported on the claim as follows:

“From the correspondence submitted it is difficult to determine whether Messrs. Merryweather & Sons, elect to urge said claim against the municipality of Manila, the military government of the Philippines, or the Federal Government of the United States. If presented to either of said governments the claim must rely on an alleged contract with the City of Manila, the creation and existence of which is denied by the present municipal authorities of Manila, who assert that said contract was not entered into by the city, but if a contract existed

it was between Messrs. Merryweather & Sons and Messrs. Aldecoa & Co., a local Manila firm.

"As at present advised, I am of the opinion that if the existence of the alleged contract were established the alleged liability, if any exists, would attach to the municipality of Manila, and would not attach to the military government of the Philippines nor the Federal Government of the United States. *The municipality of Manila is a municipal corporation, and, as such, may be sued in the courts. The controversy between Messrs. Merryweather & Sons, and the city of Manila stands on the same footing as a like controversy between individuals.* The questions involved are of a kind and character usually resolved by judicial proceedings. Therefore the parties secure an adequate remedy by applying to the Courts."

It is to be observed that this opinion was given during the military occupation and before the grant of the present Charter, but it clearly recognized the liability of the actual municipality, as then existing, to respond in the Courts upon claims arising out of obligations incurred prior to the cession, thus differing diametrically from the conclusion of the Court below in these cases, that the military government of the City of Manila took over its property free from its outstanding obligations. In fact, no one seems to have thought seriously of questioning the continuous existence of the city until the Philippine Supreme Court found that it had been dead some ten years. Such decision would seem quite anti-historic. It substitutes metaphysical theories of sovereignty for the hard facts of history and civilized usage and law.

In an elaborate report prepared by Judge Magoon, contained in the same work at pages 374 to 391, relating particularly to municipalities in Cuba, the whole subject of the effect of the withdrawal of Spanish sovereignty upon municipal property rights was exhaustively discussed and the opinion was given that "the municipalities of Cuba now possess the same rights of property, as they possessed under Spanish sovereignty" and "that as now constituted and administered, the municipalities of Cuba are permitted to exercise the ordinary rights of ownership over property, unto them belonging" (p. 388, 389).

In like manner Judge Magoon advised in relation to the municipalities of Porto Rico that they possessed the right under Spanish sovereignty to contract loans and issue bonds therefor, and retained such right upon the cession of the Island to the United States. (See Magoon on Civil Government, pages 457-460.)

If the right continued to subsist, the obligations created by the exercise of such right necessarily continued also.

On the other hand Judge Magoon advised that "liability for debt arising upon the *personal obligation of the general government* does not pass with ceded territory unless stipulated for in the treaty of cession" (Magoon, p. 182), expressly differentiating it in this respect from the contract "of a local government in the Philippines or of a political subdivision" (Ibid., p. 186).

The Attorney General of the United States also held that vested rights arising out of a contract made with the municipal authorities of Havana under Spanish sovereignty were "undoubtedly

preserved by the terms of the Treaty." (See 22 Op. Att'y. Gen. 526, per Griggs, A-G.)

These views were the necessary consequence not merely of the acceptance by the United States of the general rules of International Law, recognized by all civilized nations, but also of express decisions made by this Court and other Courts in cases arising under prior cessions of territory.

After the cession of California it was held by this Court that the Pueblo of San Francisco which had existed as a municipal organization prior to the cession, continued to exist as such corporation in spite of the change of sovereignty and that such change of sovereignty left its property rights and obligations unimpaired.

See

Townsend vs. Greeley, 5 Wall. 326;
Merryman vs. Bourne, 9 Wall. 592;
Moore vs. Steinbach, 127 U. S. 70.
Los Angeles Milling Co. vs. Los Angeles, 217 U. S. 217.

See also in the Supreme Court of California on the same subject,

Smith vs. Morse, 2 Cal. 524;
Cohas vs. Raisin, 3 Cal. 443;
Hart vs. Burnett, 15 Cal. 530.

In *Cohas vs. Raisin*, *supra*, it was held that a grant of town lands belonging to the Pueblo of San Francisco made by an American who was elected Alcalde during the War with Mexico, was valid and binding, because the municipal organization of the community was not affected or interrupted by the War. This case was cited with

approval by this Court in *Merryman vs. Bourne*, *supra*.

In like manner a contract made by city officials of New Orleans appointed by the Federal military authorities during the military occupation of the city in the Civil War, was held binding upon the city after its restoration to the sovereign control of the State of Louisiana.

New Orleans *vs.* Steamship Co., 20 Wall. 387.

Since this Court has thus recognized the binding effect of liabilities imposed by a temporary military municipal government, even after the city's restoration to "the proper city authorities," it is difficult to see on what theory the obligations created by a four hundred year old municipal government should perish with the withdrawal of its paramount sovereign. Even the arguments which were unsuccessfully urged against the binding effect of the acts of General Butler's temporary rule could have no application here.

The ruling made by the Philippine Supreme Court upon this question was therefore absolutely at variance both with the whole course of decision of this Court and with the position which has been uniformly taken by the political department of the United States.

POINT III.

The City of Manila, as at present constituted, is the successor of the City of Manila as existing under Spanish sovereignty, in respect to both its rights and obligations, and is therefore liable for the debts of the municipality which were outstanding at the time of the cession.

It is a rule well established by a long line of decisions of this Court that where a municipal corporation has been dissolved by the competent legislative authority and subsequently re-incorporated with substantially the same inhabitants and the same general mass of taxable property, although with a new name and with somewhat different boundaries, the new corporation is to be deemed the successor in law of the former, and liable for its debts. Manifestly the same principle applies with equal or greater force where there has been no dissolution of the municipality in question, but merely a new Charter from a competent authority changing the frame of Government. Two decisions of this Court particularly in point are *Mobile vs. Watson*, 116 U. S. 289 and *Shapleigh vs. San Angelo*, 167 U. S. 646, which will now be discussed.

In *Mobile vs. Watson*, 116 U. S. 289, Watson brought an action against the municipal corporation known as the Port of Mobile, upon certain bonds issued by the former City of Mobile, averring that the Port was "the legal successor of the said The Mayor, Aldermen and Common

Council of the City of Mobile, and bounden for its debts and for the payment of the said bonds."

The defendant pleaded that the bonds were issued by the City of Mobile, a different municipal corporation, and not by the defendant; that the defendant was not the successor in law nor in fact of the City of Mobile, nor legally bounden to pay its debts; precisely the defence set up in the cases now at bar.

The facts were, that the Legislature of Alabama had passed an act to vacate and annul the charter and dissolve the corporation of the City of Mobile, and another act to incorporate the Port of Mobile out of certain territory, all of which had been embraced in the former City of Mobile.

"The only question raised upon the trial was, whether as matter of law, upon the statutes of the State of Alabama, the Port of Mobile was the legal successor of the City of Mobile, and bound for the payment of the bonds and coupons sued on" (p. 291).

Execution had been issued upon the plaintiff's judgment and returned unsatisfied, whereupon he filed his petition praying for a mandamus against the proper authorities to assess and levy a special tax for the payment of his judgment. This relief was granted, and the two cases were reviewed by this Court together. The opinion of the Court says (pp. 300, 301):

"While, therefore, the area of the territory of the Port of Mobile was little more than half that of the City of Mobile, it is apparent that the former included substantially the same taxable property, and the same body of people, as the City of Mobile. It further appears

that all the property except its wharves, of the City of Mobile, used by it for public and governmental purposes, was by the authority of the act of February 24, 1881, turned over and delivered to the Port of Mobile for its use without compensation to be paid therefor."

"We are of the opinion, upon this state of the statutes and facts, that the Port of Mobile is the legal successor of the City of Mobile, and is liable for its debts." * * *

"Where the legislature of a State has given a local community, living within designated boundaries, a municipal organization, and by a subsequent act or series of acts repeals its charter and dissolves the corporation, and incorporates substantially the same people as a municipal body under a new name for the same general purpose, and the great mass of the taxable property of the old corporation is included within the limits of the new, and the property of the old corporation used for public purposes is transferred without consideration to the new corporation for the same public uses, the latter, notwithstanding a great reduction of its corporate limits, is the successor in law of the former, and liable for its debts; and if any part of the creditors of the old corporation are left without provision for the payment of their claims, they can enforce satisfaction out of the new."

It is to be observed that by the present Charter of Manila, page 14, *supra*, "all the rights of property * * * enjoyed and possessed by the City of Manila as organized under Spanish sovereignty," were transferred without consideration to the new City of Manila, and the governing body of the new City was empowered to take possession of all real estate, credits, securities or other assets of any kind, belonging to the City

of Manila as previously organized, or pertinent to the interests or the business thereof, thus assimilating the case to the re-organization of the City of Mobile, but without the feature of dissolution.

In *Shapleigh v. San Angelo*, 167 U. S. 646, the following facts appear:

The City of San Angelo was incorporated in January, 1889; in May, 1889, the city authorized an issue of bonds for the purpose of improving the streets and public highways; in the Fall of 1890 an information was filed by the County Attorney alleging that the city was never legally incorporated and praying that the corporation be declared null and void; a decree was entered on December 15th, 1891, declaring the incorporation of the city of San Angelo null and void.

In February, 1892, the new City of San Angelo was incorporated with certain boundaries covering territory entirely embraced within the boundary lines of the old organization. The complainant *Shapleigh* held certain bonds issued by the dissolved city of San Angelo. He brought suit upon them against the new city of San Angelo, averring that the proceeds of the sale were used by the former city of San Angelo in making the streets, etc. The defense was that the earlier incorporation was null and void and had been so declared and that the subsequent corporation had never assumed the debt sued upon or become liable for the payment of the same. Judgment was rendered against the plaintiff and the case brought to this Court by a writ of error.

This Court held that the original city of San Angelo could not have set up any supposed irregularities or illegality in its organization to de-

feat its obligations and proceeded to consider the legal effect of its subsequent disincorporation, and of the incorporation of the new city the following year. We quote:

“What was the legal effect of the disincorporation of the City of San Angelo and of its subsequent re-incorporation as respects the bonds in suit? Did the decree of the district court of Tom Green County abolishing the city of San Angelo as incorporated in 1889, operate to render its incorporation void *ab initio*, and to nullify all its debts and obligations created while its validity was unchallenged? Or can it be held, consistently with legal principles, that the abolition of the city government, as at first organized, because of some disregard of law, and its reconstruction so as to include within its limits the public improvements for which bonds had been issued during the first organization, devolved upon the city so reorganized the obligations that would have attached to the original city if the State had continued to acquiesce in the validity of its incorporation?” (p. 652).

The Court then quotes from the cases of

Broughton v. Pensacola, 93 U. S.
266,

Mt. Pleasant v. Beckwith, 100 U. S.
514,

Mobile v. Watson, 116 U. S. 289,

and continues:

“There are other cases declaring the same views, but which it is needless to cite. The conclusions reached by this court may be thus expressed: The State’s plenary power over its municipal corporations to change

their organization, to modify their method of internal government, or to abolish them altogether, is not restricted by contracts entered into by the municipality with its creditors or with private parties. An absolute repeal of a municipal charter is therefore effectual so far as it abolishes the old corporate organization; *but when the same or substantially the same inhabitants are erected into a new corporation, whether with extended or restricted territorial limits, such new corporation is treated as in law the successor of the old one, entitled to its property rights, and subject to its liabilities.* Dillon's Mun. Corp. vol. 1, § 172, 4th ed."

* * * * *

"The conclusion which is derivable from the authorities cited, and from the principles therein established, is that the disincorporation by legal proceedings of the city of San Angelo did not avoid legally subsisting contracts, and that upon the re-incorporation of the same inhabitants and of a territory inclusive of the improvements made under such contracts, the obligation of the old devolved upon the new corporation."

The reasoning of this Court in regard to the effect upon outstanding municipal obligations of the exercise of the State's plenary power over the governmental organization of its municipal corporations is clearly applicable to the situation in the Philippine Islands. It may be thus paraphrased:

The plenary power of a conquering country to change the organization of any municipal corporations in the conquered country, to modify their method of internal government or to abolish them altogether,

is not restricted by contracts entered into by the municipality with its creditors or with private parties. The exercise of such power by the conquering country in the repeal of municipal charters is, therefore, effectual to abolish such organizations, but when such power organizes a new municipality and passes over to it the property and property rights of the abolished corporation, such new municipality is subject to the liabilities of the old, especially since by the treaty between the victorious country and the conquered nation the property rights of municipalities are expressly protected. (Art. VIII, Treaty of Paris.)

Under this article of the treaty the United States have no power to take away the property of a municipality and confer it free of burdens upon a new municipality of their own creation. The power of the United States over existing municipalities is in absolute accord with the State's plenary power over such corporations, as expressed in *Shapleigh v. San Angelo*, to wit, to abolish them and to transfer their property rights to new corporations, but subject always to the liabilities of the old.

In the case of *Broughton vs. Pensacola*, 93 U. S. 266, cited by this Court in the *San Angelo* case, the actual decision turned upon a question of procedure, but the Court said, upon the subject now under discussion;

“The ancient doctrine, that, upon the repeal of a private corporation, its debts were extinguished, and its real property reverted to its grantors, and its personal property vested in the State, has been so far modified by modern adjudications, that a court of

equity will now lay hold of the property of a dissolved corporation, and administer it for the benefit of its creditors and stockholders. The obligation of contracts, made whilst the corporation was in existence, survives its dissolution; and the contracts may be enforced by a court of equity, so far as to subject, for their satisfaction, any property possessed by the corporation at the time. In the view of equity, its property constitutes a trust fund pledged to the payment of the debts of creditors and stockholders; and, if a *municipal corporation*, upon the surrender, or extinction in other ways, of its charter, is possessed of any property, a court of equity will equally take possession of it for the benefit of the creditors of the corporation. * * *

Although a municipal corporation, so far as it is invested with subordinate legislative powers for local purposes, is a mere instrumentality of the State for the convenient administration of government, yet, when authorized to take stock in a railroad company, and issue its obligations in payment of the stock, it is to that extent to be deemed a private corporation, and its obligations are secured by all the guaranties which protect the engagements of private individuals. The inhibition of the constitution, which preserves against the interference of a State the sacredness of contracts, applies to the liabilities of municipal corporation created by its permission."

In *Mt. Pleasant v. Beckwith*, 100 U. S., 514, also cited in the *San Angelo* case, the question arose through certain legislation of the State of Wisconsin, which changed the boundaries of certain municipal corporations, dissolved one of them and attached its territory to another and subsequently

added a part of its territory to still a third. A creditor of one of the original municipalities brought suit upon the municipal obligation and joined as defendants the municipalities to which its territory had been added. This Court sustained the power of the Legislature to change, divide, and consolidate municipalities in its discretion and "apportion the common property and the common burdens," and held further as follows (p. 531):

"It follows, unless it be held that the extinguishment of the debtor municipality discharged its debts without payment, which the Constitution forbids, that the appellant towns assumed each a proportionate share of the outstanding obligations of the debtor town when they acquired the territory, public property, and municipal jurisdiction over everything belonging to the extinguished municipality."

In this case also the distinction between *public* transactions and others is made as follows:

"Cities or towns, whenever they engage in transactions not public in their nature, act under the same pecuniary responsibility as individuals and are as much bound by their engagements as are private persons, nor is it in the power of the legislature to authorize them to violate their contracts" (p. 533).

The Court also recognized the creditor's right to a judicial declaration of the validity of his claim, irrespective of any procedural difficulties of collection, as follows:

“(Cases, doubtless, may arise when the party cannot collect what is due under the contract; but he ought always to be able by some proper action to reduce his contract to judgment” (p. 530).

In *Comanche County v. Lewis*, 133 U. S., 198, it appeared that Comanche County had been organized by proceedings legal upon their face, but for the purpose of effecting a fraudulent scheme to issue County bonds, sell them to persons ignorant of the facts and appropriate the proceeds. This was done in 1873 and 1874. The bonds were sold to *bona fide* purchasers, the County officers left the County and never returned, and the County remained with its organization totally abandoned until 1885, when it was re-organized as in cases of unorganized Counties. The bond holders sued the reorganized County and recovered. This Court held :

“But it must be borne in mind that the county, as a territorial subdivision of the State, has been in existence and unchallenged for more than a score of years. It matters not how many political organizations there may have been, or what changes in the form of organization, the county has been ever the same, and, although the name of the political community given by the statutes is the ‘board of county commissioners’ of the county, it is, after all, the county, with its property and population, which is the debtor. No one would for a moment suppose that when a county has contracted a valid obligation, the fact, if it could be made to appear, that all its inhabitants had removed and their places been supplied by others, would affect that obligation. There has been no

subdivision of the original territory; no addition to or subtraction from it. *The only change has been in the continuity of political organization, and that, neither by municipal law nor the law of nations, destroys the territorial responsibility for legal obligations.* Even a change in form does not destroy responsibility. The republic of France recognizes as valid the debts of the empire. A town whose growth enables it to cast off its village organization and assume the habiliments of a city continues liable for all debts theretofore contracted. And so the debts of a county, contracted during a valid organization, remain the obligations of the county, although for a time the organization be abandoned and there be no officers to be reached by the process of the courts" (pp. 204-205).

There are numerous other cases both in this Court and in the State Courts in which the question of the continued subsistence of municipal obligations, in spite of changes in the municipal government, has been considered and discussed. In some of them the municipal creditor was prevented from obtaining actual satisfaction of his claim by procedural or administrative obstacles, but in all of them his right to establish the validity of his claim by legal proceedings was recognized. It would unduly expand this brief to discuss these cases in detail and we will confine ourselves to a mere citation of the following authorities:

Van Hoffmann *v.* City of Quincy, 4 Wall., 535;
Girard *v.* Philadelphia, 7 Wall., 1;

Barnes v. District of Columbia, 91
 U. S., 540;
New Orleans v. Clark, 95 U. S., 644;
Meriwether v. Garrett, 102 U. S.,
 472;
New Orleans v. Morris, 105 U. S.,
 600;
Amy v. Watertown, 130 U. S., 301;
Metropolitan Railway Company v.
District of Columbia, 132 U. S., 1.
District of Columbia v. Woodbury,
 136 U. S., 450.

As we have already stated, "the inhibition of the constitution which preserves against the interference of a State the sacredness of contracts," including the liabilities of a municipal corporation, is by the Organic Act made applicable to the legislation of the Philippine Commission, which must consequently be read in the light thereof and construed consistently therewith.

Whether we view the present Manila as identical with the old Manila, or merely as its successor, the result is the same so far as these cases are concerned. Either view works justice.

POINT IV.

The juristic personality of municipal corporations and their liability to suit were recognized and established by the Roman Law and the Spanish law, both ancient and modern.

The juristic personality of organized municipalities, and their liability to legal process to compel them to respond to their obligations, are principles firmly established in the foundations of the Civil Law. This appears by the following quotations from the Digest of Justinian:

“Dig. Lib. III. Tit. IV., l. 7. Ulpian (on the Edict 10).

“Just as the praetor allowed an action on behalf of the municipality, so too he thought with great reason that the edict should be made to refer to actions against one. I should say too that where a legate has spent money on some concern of the municipality, he ought to be allowed an action against the municipal body.”

• • • • •
“Ibid. l. 8. Javolenus (extracts from Cas-
sius 15).

“If Town Communities fail to be defended by those persons who manage their property, and there are no corporal effects belonging to the corporation of which possession can be taken by the creditors, satisfaction ought to be given to the parties suing, out of the debts due to the town.”

(Monro's Translation, Vol. 1, p.
174.)

Savigny, the great historian of and commentator upon the Roman Law, elaborates these principles as follows:—

*“A natural existence have Communities, Towns and Villages, which are mostly older than the State itself (that is to say in its present Unity and Limitation), and which constitute the fundamental elements of the State. Their juristical existence can scarcely ever be doubted * * *.”*

Savigny on Jural Relations, translated by Rattigan, § 86.

“It was in regard to dependent (Communities (Municipalities and Colonies), by the expansion of the State, that the notion of Juristical Persons at first obtained a remarkable application, and also a more definite development; because these Communities, like natural persons, had, on the one hand, need of property and the opportunity for its acquisition, but on the other hand, such a dependent character that they could be arraigned before a Court of Justice. In this last respect they differed from the Roman State, which was not subject to the jurisdiction of any Judge * * *.”

(Ibid., § 87.)

“The Jural Capacity of Juristical Persons would have a very imperfect result if the Capacity of appearing as a Plaintiff or Defendant in a Judicial Proceeding were not conferred upon them. This capacity is therefore also declared as a general proposition. * * *

“If a juristical person were condemned in an Action, the execution of the decree was

effected by the same means as against a Natural Person."

(Ibid., § 92.)

"A special Senatus-Consultum permitted Towns to acquire Inheritances by means of a Fidei-Commissarian Restitution."

(Ibid., § 93.)

The same doctrine is declared in the early Spanish Codes. In the *Partidas* we find the following:—

Partida Third, Title II, Law XIII.

"HOW, IF ANY ONE HAS A CLAIM AGAINST THE COUNCIL OF ANY PLACE OR CHAPTER OR CONVENT, HE MUST MAKE IT AGAINST ITS ATTORNEY.

"If anyone desires to bring a suit against the Council of a City or Town or Chapter of a Church or Convent of Monks, such a claim as that cannot be made against all the individuals in common, because they are many, but it must be made against the Attorney (*Personero*) who has been appointed to appear for them, for if it should be made in any other way against other persons specified, although they are of that place, it would not be effectual. Because the performance of the thing which the whole Council or the Chapter or the Convent may owe or may be required to do cannot be enforced on its behalf against specific persons of that place, in as much as all in one are under obligation to perform it, just as the debt that may be owing to specific persons of any place cannot be demanded by all in one, but only by those to whom the claim may belong."

In the *Novisima Recopilacion*, the following exemption from execution of certain specific municipal property shows by implication that suits against municipalities were recognized and that property not exempted might be taken in execution.

Novisima Recopilacion, Book VII, Title XX, Law II.

“We order that henceforth no execution may or shall be levied against the stores of bread which the Cities, Towns and Villages of the Kingdom may have, for debt which such municipality may owe, and that our Courts shall regard and comply with this.”

(Phillip Second at Valladolid, 1558).

The liability to suit of municipalities in the Spanish Colonial possessions was specifically recognized at a very early date.

Laws of the Indies, Book IV., Title XI, Law 1.

“THAT EACH CITY OR TOWN MAY NAME AN ATTORNEY WHO SHALL APPEAR IN ITS CAUSES.

“We declare that the Cities, Towns and Settlements of the Indies may name Attorneys who shall appear in their affairs and defend them in our Council, Court and Tribunals, to secure their right and justice and their other claims which may be well founded.”

(Emperor Charles at Barcelona, November 14, 1519, and Toledo, November 6th, 1528).

The Spanish Laws in regard to municipalities generally were revised and codified from time to time until the Law of 1877, which was still in force

at the time of the cession of the Philippines. This Law provides among other things:

“ARTICLE 1. A municipality is a lawful association of all persons residing within municipal boundaries.

Its legal representative is the Ayuntamiento.”

* * * * *

“ARTICLE 30. The interior Government of each municipal circumscription shall be confided to an Ayuntamiento composed of Counsellors divided into three categories; Alcalde, Tenientes, Regidores.”

Thus the Ayuntamiento is at once the governing body of the municipality and also its corporate style, just as in former times the corporate style of New York City was “The Mayor, Aldermen and Commonalty of the City of New York.” Hence, in the Aguado case the contract sued upon is described as having been made with the Ayuntamiento of Manila.

Special provision was made by the same Law for the collection of debts due from municipalities as follows:—

“ARTICE 143. Debts of Towns that are not secured by pledge or mortgage shall not be exacted from Ayuntamientos by proceedings of constraint.

“When any Town has been condemned to the payment of any sum, the Ayuntamiento within the term of ten days from the time that judgment has been declared executory shall proceed to make up an extraordinary budget, unless the creditor assents to the postponement of a collection, in such man-

ner that the amounts necessary for the payment of the capital, and interest agreed upon, may be included in successive ordinary budgets.

"ARTICLE 144. If the resources at the disposition of the Town should be insufficient to cover its debts, or if in the opinion of the Ayuntamientos, it should be possible to surcharge the contingent imposed upon the inhabitants, and the creditors should not assent to such means as may be offered them for the payment of its debts, the record shall be remitted to the Provincial Deputation to the end that after hearing the parties interested, it may make the proper disposition to effect the payment without prejudice to the jurisdiction of the tribunals and ordinary courts to determine upon the legality and preference of the claims."

The entire Law may be found in Alcubilla's *Diccionario de la Administracion Española*, Volume 1, pp. 839-863, *sub. tit.* Ayuntamientos.

This Law also contained provisions for the suppression of a municipality and its annexation to an adjoining municipality. When this was done, however, the debts of the dissolved municipality became a charge upon the new consolidated municipality. Such a question actually arose shortly after the Law of 1877 was enacted. The Ayuntamiento of Alba was dissolved and annexed to the Ayuntamiento of Pontevedra. The new Ayuntamiento struck out of its budget the amount required for the payment of the teachers in the primary schools in the dissolved Ayuntamiento. This was approved by the Municipal Council, but set aside by the Provincial Commission, the ruling of which latter was confirmed by the Supreme Government,

by Royal Decree of January 28th, 1879, as follows:—

“Considering the conditions under which the annexation of Alba to Pontevedra was effected, there can be no doubt that as the latter acquired all the property and rights of the former, Pontevedra thereby became solidary to all obligations which Alba had incurred, and although the contract made by the suppressed municipality with the teachers was not annexed, the fact that the budget during the three years following the incorporation of the municipality contained the amount of the compensation referred to in Art. 192 of the Law of the 9th of September, 1857, is a demonstration of the existence of the contract.”

Alcubilla, Vol. 1, p. 872.

The usual method of collection of claims against municipalities, or enforcement of their obligations generally, was through the administrative Tribunals, but where a claim was disputed on the merits, recourse to the ordinary Courts was both necessary and proper. This appears from a number of decisions reported in Alcubilla. In one of these cases it appeared that a judgment had been obtained against an Ayuntamiento upon default, after service of process upon the Alcalde. The plaintiff then demanded that an extraordinary budget be made up for the payment of his claim. This was opposed by the higher authorities and it was held by Royal Order of March 16th, 1883, that the plaintiff's judgment was not executory against the Ayuntamiento, upon the double ground that only the regular attorneys (*Procuradores Sindicos*) of the Ayuntamiento could represent the corporation in judicial proceedings and

that in this particular case the Alcalde had been guilty of collusion and neglect. (Alcubilla, Vol. 3, page 1037.)

By a royal decree of June 28th, 1879, it was held that until the Courts have established, or the Ayuntamiento legally recognized a given claim, recourse should not be had to the administrative jurisdiction (Alcubilla, Vol. 3, page 1036).

In another case where the Attorney of an Ayuntamiento brought suit against it for his fees and costs incurred in its representation, the defendant claimed that under Articles 143 and 144 of the Law of Municipalities, the Court had no jurisdiction. The Audiencia, however, sustained the jurisdiction of the Court on the ground that it was competent to determine the rightfulness of the claim and to require the Ayuntamiento within the term of ten days either to pay the amount or to show that it was excessive or illegal. (Alcubilla, Vol. 3, page 1038).

Numerous other decisions are cited by Alcubilla to the same general effect, and the principle is clearly established that when the debts of a municipality are recognized and liquidated, then recourse to the administrative authorities is proper, but if there is a controversy as to the lawfulness of the claim, the time of its maturity or any set-offs or deductions, it must be determined by the ordinary Civil Courts.

When the claim was established or admitted, then the procedure indicated by Article 143 of the Law of Municipalities was to be followed instead of the ordinary procedure by execution.

POINT V.

The plaintiffs are entitled to the remedies of judgment and execution for the enforcement of their claims.

As has just been pointed out, the creditors of a municipality have always been entitled under Spanish law to establish their claims, if disputed, by proceedings in the regular Courts, and have also been entitled to enforce them by execution with certain reasonable limitations, or by summary administrative proceedings which afforded an even more efficacious remedy. The present Charter of the City of Manila specifically preserves both the right of suit and the right of enforcement by execution, since it expressly provides that the City may "sue and be sued and prosecute and defend to final judgment and execution."

In like manner under the Common Law, as generally in force in the United States, municipalities are liable to suit and to the enforcement by execution of judgments against them. The right of enforcement by execution is subject to the general limitation that execution can not be levied upon properties owned by the City of such public utility and necessity, that they are held in trust for the use of the citizens, such as public parks, public buildings, wharves and the like (See *New Orleans vs. Morris*, 105 U. S. 600). But municipalities often own other property not in itself devoted to any public use, as for example, in one of the cases at bar, certain stock of a banking corporation. The question upon what property an execution against a municipality may be levied is

in the first instance to be determined by the officer charged with the process, and it is not to be assumed that a public officer will attempt to levy upon property exempt from execution whether belonging to a municipality or an individual. It is not necessary for this Court to determine in general terms upon what property now belonging to the City of Manila execution against the City may be levied. Even if there were no such property, the plaintiffs would still be entitled to their judgments. It is to be assumed that if the validity and amount of the claim are determined by the Court, it will be paid by the City; if it is not paid, and should execution fail or prove inadequate, other proceedings by way of mandamus or otherwise may be available.

It is a matter of common knowledge that executions against the City of New York are frequently issued and are usually levied upon the portraits in the Governor's Room in the New York City Hall; needless to say these ancient portraits are not actually seized and sold, but the purpose of the legal process is fulfilled by the consequent payment of the judgment.

It is immaterial in the cases at bar that the method of enforcing payment of municipal obligations may have been changed by legislation since the cession. The general rule is that a creditor has a right to avail himself of all remedies existing at the time his right accrues or subsequently created, and that when his right to such a new remedy has accrued, he cannot be deprived of its benefit by its repeal.

See *Seibert vs. Lewis*, 122 U. S. 284;
Memphis vs. United States, 97 U. S.
293.

The case last above cited is particularly in point.

Plaintiff obtained a decree against the City of Memphis on March 16th, 1875; execution was issued and returned unsatisfied, and an alternative writ of mandamus was awarded to compel the City to levy a tax sufficient to pay the decree under the terms of an existing statute. The statute had been repealed March 20th, 1875, four days after plaintiff's decree; the repealing act was approved by the Governor March 23rd, 1875. It was held that prior to the repeal, plaintiff had acquired a vested right to the mandamus, not defeated by the repeal. The repealed statute was of March, 1873, subsequent to plaintiff's contract which was made in 1867.

Since the special administrative machinery provided by the Spanish law for the enforcement of municipal obligations has been wholly abrogated, the plaintiffs are the more clearly entitled to all the remedies provided by the new legislation. It would have been inappropriate, however, for them to attempt to compel payment by mandamus without independent judicial proceedings to establish their claims. The general rule is that any right sought to be enforced by mandamus must be clear and undisputed or substantially indisputable, and that the party seeking relief is without other legal remedy.

See

Riggs vs. Johnson County, 6 Wall.
at page 193.

Commissioners of Knox County vs.
Aspinwall, 24 How. 376.

It is true that in the Philippine Islands the conditions precedent for resort to mandamus proceedings are somewhat less stringent, and that a similar writ, called a "mandate," may be granted where there is "no other plain, speedy and adequate remedy in the ordinary Courts of Law." (Phil. Code Civ. Proc. Section 222, now Sec. 2663 Phil. Comp. Stat.) In the case of Hoey vs. Baldwin, 1 Phil. Rep. 551, a demurrer to a petition for such a writ, to enforce payment of a salary claimed by plaintiff as a public official, was overruled upon the ground that the remedy at law was not *sufficiently* plain, speedy or adequate, but the Court assumed that an ordinary action might be maintained, although there were difficulties in the way of securing payment of the judgment.

POINT VI.

The City of Manila holds the Carriedo Fund as a trustee and such fund is liable for obligations incurred in the administration of the Carriedo Water Works.

We have already sketched in outline the history of Carriedo's great public benefaction to the City of Manila, the importance of which was recognized by the first Philippine Commission in the following terms:

"The public squares and the neighborhood are adorned with beautiful gardens constantly watered by fountains, and thanks

to the immortal Carriedo, who died in 1743, there is hardly a street in the entire municipal district which does not have its own standpipe to furnish an abundance of water to the people living in the vicinity." (Rep. of Phil. Com. for 1900, Vol. 3, p. 49).

We have also seen how this fund has survived the attacks of greedy heirs and jealous public officers, so that it is still held by the City in accordance with the directions of the testator, viz:

"That the said money together with what it may produce from investment or employment, must be duly separated, and as a fund apart from all of the other funds which are handled as income, or funds of this our city, and from the other funds which might be destined for expenses of its commerce, since in this manner this fund must be managed independently and apart from whatsoever others of those mentioned."

(Aguado Rec., p. 16.)

When questions arose in the earlier stages of the administration of the Philippines in regard to the proper disposition of the Carriedo Fund, the chief law officer of the Islands expressed himself as follows:

"The City of Manila cannot lawfully devote these funds to any other purposes than those mentioned in the will of the donor and in the conditions annexed. However, I am unable to find therein any limitations upon the right of the city of Manila to use the 'Carriedo Fund' in the payment of any proper expenditures con-

nected with the administration of the Carriedo water system."

(Opinions Atty. Gen. P. I. Vol. 1, p. 319 at 323. Wilfley, A.-G. Sept. 6, 1902).

"The Carriedo Fund, as such, cannot be placed to the general credit of the City of Manila, for the reason that the City occupies a fiduciary relation toward said fund and its duties are analogous to those of a trustee at common law."

* * * * *

"The Carriedo water system, and all its assets, must be considered as the property of a continuing and permanent trust."

(Opinions Atty. Gen. P. I. Vol. 1, pp. 450, 452, 543. Wilfley, A.-G. Nov. 17th, 1902).

These views are in accordance with the uniform current of decision in this Court and the general weight of authority in this country.

Judge Dillon in his classic treatise on Municipal Corporations clearly differentiates between the functions of a municipality "as an agency of the State to assist in the civil government of the country" and as an association of the inhabitants of a given locality "to regulate and administer the local or internal affairs of the City, Town or District which is incorporated," and characterizes the latter as "the primary and fundamental idea of a municipal corporation." (See Dillon's Mun. Corp., 4th Ed., §§ 19-21.)

A municipal corporation in its *quasi*-private capacity may be trustee of a charity and it is then subject to all the general rules of law governing

such trusts and private trustees thereof, and the trust continues unimpaired despite any exercise of legislative power over the municipal corporation (*Ibid.*, § 64). The leading case on this subject in this Court is the Girard Will case. (*Vidal vs. Girard*, 2 How. 127; *Girard vs. Philadelphia*, 7 Wall. 1). There this Court held that

“where the corporation has a legal capacity to take real or personal estate, there it may take and hold it upon trust in the same manner and to the same extent as a private person may do,”

subject only to the limitation that

“if the trust be repugnant to or inconsistent with the proper purposes for which the corporation was created that may furnish a ground why it may not be compellible to execute it” (2 How., 187, 188),

and that in general, a municipal corporation was capable of executing such a trust. The Court also said, by Mr. Justice Story:

“that any attempt to narrow down the powers given to the corporation so as to exclude it from taking property upon trusts for purposes confessedly charitable and beneficial to the city or the public, would be to introduce a doctrine inconsistent with sound principles and defeat instead of promote the true policy of the state” (*Ibid.* p. 190).

In reaching this conclusion Mr. Justice Story made use of the following illustration which is strikingly applicable to the case at bar:

“If, for example, the testator by his present Will had devised certain estate of the value of \$1,000,000, for the purpose of applying the

income thereof to supplying the City of Philadelphia with good and wholesome water * * * why, although not specifically enumerated among the objects of the Charter would not such a devise upon such a trust have been valid and within the scope of the legitimate purposes of the corporation, and the corporation capable of executing it as trustees?" (Ibid. p. 189).

Further quotation from reported cases upon this question would seem superfluous. We shall, therefore, merely cite the following.

United States v. Railroad Co., 17 Wall. 322;

Commissioners v. Lucas, 93 U. S. 108, 115;

Hunter v. Pittsburgh, 207 U. S. 161, 179;

Philadelphia v. Fox, 64 Pennsylvania State, 169, at p. 182;

People v. Hurlbut, 9 Am. Rep. 108.

It was claimed on behalf of the City of Manila in the Court below that the Carriedo trust was invalid under Spanish Law as a "prohibited substitution." That its validity had been directly sustained both by the Spanish Courts and the Spanish Crown (*supra*, p. 6) would seem a sufficient answer to the objection.

A similar attack was made on the same ground upon a charitable bequest to the City of New Orleans in a jurisdiction where substantially the same system of civil law prevailed, and the question was authoritatively settled by this Court in the MacDonogh Will Case, 15 How. 367.

In that case it appeared that the testator Mc Donogh made a will by which he gave his residu-

ary estate to the corporations of the cities of New Orleans and Baltimore, one-half to each, for the education of the poor in those cities. Among the objections made to the will, was the contention that it was obnoxious to the rule against substitutions, or what were known in the civil law as *fidei commissa*, and that the cities could not take the trust estates bequeathed.

This Court declared itself on these subjects as follows:

"The appellees insist that it is a disposition reprobated by law, for that it contains 'substitutions and *fidei commissa*,' which are prohibited by article 1507 of the code, and which annul the donation in which they are found." * * * (p. 407).

"These terms imply a disposition of property through a succession of donees. The substitution of the article 1507 of the code being an estate for life, to be followed by a continuing estate in another by the appointment of the testator" (p. 408).

* * * * *

"We find nothing of the *fidei commissa* or substitution in the legacy to the cities" (p. 409).

* * * * *

"Our next inquiry will be, whether the testator is authorized to define the use and destination of his legacy. We have seen that donations to the cities of the Roman empire followed immediately upon the *senatus consultum* which allowed them to take, and that the destination of such donations to public uses was declared. Domat says, 'One can bequeathe or devise to a city or other corporation whatsoever ecclesiastical or lay, and appropriate the gift to some lawful and honorable purpose, or for public works, for feeding the poor, or for

other objects of piety or benevolence.' Domat, Lois Civiles, b. 4, tit. 2, Sec. 2" (pp. 409, 410).

* * * * *

"An acceptance of such donations in a will is unnecessary. Nor do we see any ground for inferring a prohibition of donations by will, which are lawful, *inter vivos*, in the absence of any prohibitive article in the code. We are of opinion, therefore, that the testator might declare the uses to which he destined his legacy to the cities; and the destination, being for purposes within the range of the powers and duties of its public authorities, is valid" (p. 410).

Since this particular trust has been sustained by the Spanish Courts and a very similar trust created under a similar legal system has been sustained by this Court, any further discussion of this objection would seem unnecessary.

The transactions out of which the Aguado case arises were had with the City of Manila with express reference to the Carriedo Water Works. The coal was supplied for the use and service of the Carriedo Trust and the deposit made to guarantee the complete performance of the contract. The trust fund was required to be held separate and apart from any other funds or property of the City and was so held in a separate account, to the special credit of which there stood and still stands an investment in bank stock on which the City collects the income. Under the will of Carriedo these funds could not be diverted to any other uses than the construction and maintenance of the Water Works and water service of the City of Manila. The City as reorganized took the funds and property subject to the conditions

of the trust imposed on them. They remained subject to the uses and purposes designated by the founder of the trust and they may properly be made answerable for the payment of claims for supplies necessary for the maintenance of the City water service.

Where a person has dealt with the trustee and manager of a particular fund devoted to a particular purpose and has furnished supplies necessary to the performance of that purpose, he is equitably entitled to be paid for such supplies out of the fund in relation to and upon the credit of which he acted.

A trustee may incur liabilities or make expenditures for the protection of the trust estate, and, *a fortiori*, for the performance of the trust itself, and he may indemnify himself by recourse to the trust property, upon which he has a lien for this purpose. To avoid circuitry of action, he is sometimes allowed expressly to exempt himself and transfer his lien, thus making the expenditure a direct charge upon the trust estate.

See

New *v. Nicoll*, 73 N. Y., 127.

Noyes *v. Blakeman*, 6 N. Y., 567,
580, and cases cited.

Van Slyke *v. Bush*, 123 N. Y., 47.

The ultimate source of payment for expenditures connected with the Manila Water Works is properly the Carriedo Fund, which was founded for that express purpose. In the Aguado case, therefore, the Court of First Instance was right in giving the plaintiff direct recourse against such fund.

If, however, it should be thought by this Court that the Aguado contract does not expressly bind

the Carriedo fund, then the contract must be regarded as the individual obligation of the City, and the designation in the pleadings of the City as trustee becomes simply *descriptio personæ*. (See *Taylor v. Davis*, 110 U. S., 330, at p. 336.) In either event the plaintiff Aguado is entitled to payment, either specifically out of the fund or generally by the City.

CONCLUSION.

In the Aguado case the judgment of the Philippine Supreme Court should be reversed and that of the Court of First Instance affirmed.

In the Villas and Trigas cases the judgments of both Courts below should be reversed and the causes remanded with directions to overrule the defendant's demurrers and give judgment for the plaintiffs, unless the defendant shall obtain leave to answer upon terms to be fixed by the Court and shall answer in accordance therewith.

Respectfully submitted this 18th day of January, 1911.

PAUL FULLER,
FREDERIC R. COUDERT,
HARRY WESTON VAN DYKE,
HOWARD THAYER KINGSBURY,
Counsels for Plaintiffs in Error
and Appellants,
2 Rector St., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1910.

VERISIMO VASQUEZ VILAS,
Plaintiff in Error
and Appellant,

against

THE CITY OF MANILA.

No. 53.

ESPERANZA OTERO TRIGAS and
others,
Plaintiffs in Error
and Appellants,

against

THE CITY OF MANILA.

No. 54.

RICARDO AGUADO,
Appellant,

against

THE CITY OF MANILA.

No. 207.

IN ERROR TO AND APPEAL FROM THE SUPREME
COURT OF THE PHILIPPINE ISLANDS.

BRIEF IN REPLY FOR PLAINTIFFS IN
ERROR AND APPELLANTS.

The Brief of the learned Counsel for the City
of Manila presents three main propositions, to

which a reply appears to be in order. They are as follows:

A. This Court has not jurisdiction.

B. The debts in suit were liabilities of the Spanish Crown and hence were assumed by Spain in the Treaty.

C. The Carriedo bequest is not a continuing trust for the maintenance of the Water Works, but one merely for their construction, and has been performed.

We shall take up these points in order.

A.

The Jurisdiction of this Court.

It is contended on behalf of the City of Manila that since the Treaty was not specially invoked by the plaintiffs' pleadings, there is no jurisdictional question properly presented. It is sought to assimilate appeals from the Philippine Supreme Court in this respect to the review of State Court judgments by writ of error.

This classification is erroneous and misleading. To review a State Court judgment involving Treaty rights it is required by statute that the alleged right under the Treaty should have been "specially set up or claimed" and the decision must have been adverse to such claim. (U. S. Rev. Stats. § 709). To review a judgment of the Philippine Supreme Court, it is sufficient that any Statute or Treaty of the United States be "involved" (32 U. S. Stat. 695), and it is deemed

to be "involved" where its construction or effect has been passed on by the Court below or has to be passed on by this Court in reaching its decision. (See *Reavis vs. Fianza*, 215 U. S., 16 at p. 22.)

Even for the review of State Court judgments it is sufficient that the requisite "federal question" be raised at any stage of the proceedings in time for it to be actually considered and determined by the State Court. This may be done as late as on a motion for re-argument. (See *Mallett v. North Carolina*, 181 U. S., 589). In the cases at bar it expressly appears by the Record that the claim of rights under the Treaty was made before and considered by the Philippine Supreme Court. In the *Aguado* case the Court below says (Rec. p. 51):

"Our attention is called to article 8 of the Treaty of Paris."

In the *Trigas* case the Court below says (Rec. p. 11).

"The plaintiffs apparently rely for recovery upon Act 183 of the United States Philippine Commission * * * and further upon the provisions of the Treaty of Paris."

The *Vilas* case appears to have been regarded as dependent upon the decision in the *Aguado* case and to have been so decided (Rec. pp. 6, 7).

In each case the plaintiff set up a cause of action which existed against the City of Manila at the time of the change of sovereignty, and relied upon the Treaty to prevent a forfeiture or extinction of his rights. It was unnecessary to *plead* the

Treaty, as the Court was bound to take judicial notice of it.

Even in regard to the review of State Court judgments, this Court holds:

“The true test is not whether the record exhibits an express statement that a Federal question was presented, but whether such a question was decided, and decided adversely to the Federal right. Everywhere in our decisions, it has been held that we may review the judgments of a State court when the determination or judgment of that court could not have been given without deciding upon a right or authority claimed to exist under the Constitution, laws, or treaties of the United States, and deciding against that right.”

Murray v. Charleston, 96 U. S. 432, at p. 442.

The Records here show that the Treaty was actually invoked and considered below. Its effect is necessarily “involved” in the determination of the cases here, since the denial of plaintiffs’ rights is a violation of the Treaty.

The objections to the jurisdiction of this Court are therefore without merit.

B.

The Effect of the Change of Sovereignty.

The argument on behalf of the City of Manila appears to be in effect:

(1) That the City as existing under Spanish rule was a "subsidiary instrumentality of government" (Defendant's Brief, p. 24), and therefore subject to any change or modification in the uncontrolled discretion of the new Sovereign;

(2) That under the charter bestowed by the new Sovereign, the City had no power "to assume obligations of a former municipality which absolutely disappeared as a municipal governmental entity upon the capture of the City" (Ibid. p. 26);

(3) That the property of the Spanish City of Manila was bought and paid for by the United States (Ibid. p. 26);

(4) That the plaintiffs' causes of action against the City were not "property" within the protection of the Treaty (Ibid. pp. 15, 28).

Proposition (1) is doubtless true as far as it goes, but when coupled with the admission (Ibid. p. 24), that "a municipal corporation has a dual character," and is a "quasi-individual, legal entity," as well as an instrumentality of government, it becomes immaterial. The dealings of the plaintiffs in all three cases were with the City as a "legal entity," a juristic person, not as a subdivision of the general government. The maintenance of the City Water Works and the collection of purely *municipal* taxes *eo nomine*, were affairs of a municipal and not governmental nature.

An illuminating discussion of this distinction will be found in Goodnow on Municipal Home Rule, p. 150 *et seq.*

As shown in our former Brief, the power of the Sovereign which created a municipality to

change its frame of government is as plenary under our law as the power claimed under international law for a new Sovereign to which the municipality may pass. The former, however, is subject to the restrictions of the Federal Constitution (and not merely of the State Bills of Rights, as claimed by Defendant's Counsel at page 31 of his Brief); and the latter is equally subject in the present instance to the restrictions of the Treaty and the Organic Act.

Proposition (2) contains both an error of fact and a fallacy of reasoning. The Municipality of Manila did not "disappear as a municipal governmental entity upon the capture of the City." Its government was administered in part by a new set of officers and with certain changes of mechanism, but the "municipal governmental entity," known as the City of Manila, continued to exist and was recognized as so continuing by the Capitulation, the General Orders of the Military authorities, the Treaty and the President's Instructions to the Commission. Immediately after the capitulation, General MacArthur was appointed "Provost Marshal General of the City of Manila" and directed to retain and employ "the present subordinate officers of civil administration" until he should see fit to make other appointments (Gen. Orders No. 4 of August 15, 1898. Deft.'s Brief, p. 44.) There was no occasion for the new charter to grant to the City power to "assume" obligations to which it necessarily remained subject. There might have been a specific *recognition* of such obligations, but that would have been a matter of further assurance, not of necessity. The obligations existed beyond the power of the Philippine Commission to give or take away. It did not attempt to do either.

We do not dispute the right to enact a new charter, but the statement by Defendant's Counsel (Brief p. 12) that the Organic Act expressly ratified all the legislation of the Philippine Commission already enacted, including the Manila Charter, is erroneous. In the Organic Act, Congress specifically ratified the Commission's Act of September 6, 1901, providing for the organization of four governmental departments, but contained no general ratification of the Commission's legislation as a whole (32 U. S. Stat. 691). In any event, the present Charter contains nothing adverse to the judicial establishment of plaintiffs' claims, whatever administrative regulations it may impose upon their collection.

Proposition (3) is also historically erroneous. The Spanish Government did not own and never claimed the municipal property of the City of Manila or of the other municipal corporations under its sovereignty. It could not sell, and the United States could not buy from it, the property of another. That no such absurdity was contemplated is demonstrated by the Treaty provisions (Art. VIII) which describe the property transferred as "all the buildings, wharves, barracks, forts, structures, public highways, and *other immovable property, which, in conformity with law, belong to the public domain, and as such belong to the Crown of Spain,*" and which also specifically guarantee the property rights of municipalities. The Protocols of the Treaty show that the distinction between sovereign indebtedness and local obligations was recognized throughout the negotiations, and that what the American Commissioners were avoiding was any assumption by the United States of any part of the Spanish *national*

debt which Spain had attempted or might attempt to saddle upon her insular possessions. They expressly disclaimed any intention on the part of their Government to "disregard the obligations of international law" in respect to valid and binding contracts of a local nature (Sen. Doc. 62, 55th Cong., 3d Sess., p. 261).

The "claims" of its own citizens or subjects, which each Government relinquished, were those "against the other Government" (Treaty Art. VIII), with no reference to its subordinate "instrumentalities," as claimed by Defendant's Counsel (Brief, p. 15). Moreover, there is no suggestion that the United States Government has assumed or is liable for any municipal obligations which existed at the time of the cession. We merely contend that the existing liability of the municipality has not been taken away. This distinction between national and local obligations was well expressed by Attorney General Griggs in his opinion in regard to the Manila Railway Company (23 Op. Atty. Gen., p. 181, at pp. 190, 191):

"A debt or executory contract by a city or province, whether made by its people or by imperial authorities over it, for gas or irrigation works, or other local works, including railroads of only local use, presents another question altogether. He who contends that the liability in such a case is destroyed by a mere change of sovereignty over the city or province, has clearly an unjust cause to maintain. * * *

"Probably neither a debt, nor even an executory contract of a city for gas works, or of a province for irrigation works or railroads of purely provincial interest, can justly be repudiated upon a change of im-

“perial sovereignty, whether made by the
 “people of the city or province or by im-
 “perial agents duly authorized to act for
 “either.”

It is a general rule of international law that local obligations that “run with the land” are not affected by a change of sovereignty, however brought about, and that “all local charges and guaranteed debts to which certain domains and their revenues are dedicated survive as charges upon the localities to which they relate, with their equities unimpaired” (Taylor’s Int. Pub. Law, §§165, 168).

Proposition (4), that plaintiffs’ claims are not “property” within the meaning of the Treaty, hardly requires serious discussion. The Treaty clause preserves inviolate “the property or rights which by law belong to the peaceful possession of property of all kinds,” or, in the Spanish text, “*la propiedad, o los derechos que correspondan, con arreglo a las leyes, al poseedor pacifico, de los bienes de todas clases.*” To attempt, by subtle interpretations of the word “possession,” to exclude choses in action from the protection of the Treaty, is an attack upon the substantial meaning of a solemn international compact by mere verbal juggling. As Chief Justice Marshall said in *Soulard v. United States*, 4 Pet. 511, the term “property” is “supposed to embrace those rights which lie in contract; those which are executory, as well as those which are executed.” In that case property rights in land were under consideration, but there is no reason for applying any other definition to chattel interests. In *United States v. Reynes*, 9 How., 127, this Court construed an earlier Treaty

of Paris (1803), which contained this clause: "The inhabitants of the ceded territory * * * shall be maintained and protected in the free enjoyment of their liberty, *property* and the religion which they profess," and said: "The term *property* in this article will embrace rights either in possession or in action" (p. 151).

If the right to enforce and receive payment of a debt for goods sold and delivered, work done or moneys deposited, is not a vested right of property, then we must rewrite our law and remodel our civilization.

The case of *O'Reilly de Camara vs. Brooke*, 209 U. S., 45, cited by Defendant's Counsel, is not at all in point. There the very ground of the decision was that plaintiff's claim of property was merely "the incident of an office," and that the incidents fell with the office. Here the plaintiffs' rights rest in contract simply, and have nothing to do with any office.

Defendant's Counsel quotes largely from the last Spanish Charter of the City of Manila, but discloses nothing which derogates from plaintiffs' rights to enforce their claims by appropriate legal proceedings. The provision exempting the Spanish City of Manila from execution (Defendant's Brief, p. 8) is precisely the same as the corresponding provision in the general "Law of Municipalities," quoted in our Brief at pp. 47-48. The fact that the Governor General played a certain part in the administration of the City Government and had certain powers of supervision and veto, did not make the municipal liabilities part of the national debt of Spain, or in any way deprive them of their municipal character. The Governor and Lieutenant Governor of

Connecticut are *ex officio* members of the Corporation of Yale University, but that does not make the debts of the University liabilities of the State, or bring them within the State's exemption from suit. The analogy would seem complete.

Defendant's Counsel characterizes as "new" the doctrine that municipal property, not held by the corporation for public uses, is subject to execution. This Court has uniformly recognized this "new" doctrine, notably in *Workman v. New York City*, 179 U. S., 552, 565; and the rule is so well established that one of the lower Federal Courts long ago expressed it as follows:

"It is a *general principle of law* that the "private property of municipal corporations, "*—i. e., that which is not necessary to the* "performance of the functions of government—may be seized and sold for the payment of debts." *Hart v. City of New Orleans*, 12 Fed. Rep., 292, at p. 294.

C.

The nature of the Carriedo Trust.

The only portion of Carriedo's own language which appears in the Record is found at page 15 in the Transcript in the Aguado case. This shows an offer to the City of 10,000 pesos "*to conduct water from San Pedro Macati to this City by an aqueduct.*" The provisions at pages 16-18 are from a document prepared by the Trustees, and while these indicate the construction of the aqueduct as necessarily the primary and immediate purpose of the trust, they also show that the con-

tinued maintenance of the Water Works and of public fountains was contemplated, and that the whole undertaking was to be carried on as a continuing and partially self-supporting establishment. Those who used the water were to be required "to contribute to the cost of the conduction," and the "income and products" thus derived were to be used for repairs and expenses of operation (Aguado Rec., pp. 17, 18). It is quite immaterial whether the particular fund now held by the City on this account was derived from the original Carriedo bequest or its accumulations, or from water rates paid by consumers, or from other sources. It is sufficient that it is expressly admitted in the Record that the securities in question are held by the City, and have been so held since prior to the capitulation, as "a part of the Carriedo funds" (Aguado Rec., p. 12), and therefore necessarily in a trust capacity.

Defendant's Counsel propounds, as one of the questions to be considered (Brief, p. 38): "Upon the change of sovereignty was the *United States*, under the terms of the trust, charged with an obligation as trustee?" No such question is or ever has been involved in the case. It has never been contended that the United States were under any obligation in the premises except to refrain from interfering with private property. Our position is simply that the "obligation as trustee" as well as the obligation as debtor continued as a charge upon the continuously existing municipality, in spite of changes of paramount sovereignty or administrative machinery. Any other rule would work spoliation.

CONCLUSION.

The defendant has shown no good cause to the contrary. and the judgments under review should be reversed.

Respectfully submitted this 20th day of February, 1911.

PAUL FULLER,
FREDERIC R. COUDERT,
HARRY WESTON VAN DYKE,
HOWARD THAYER KINGSBURY,
Counsel for Plaintiffs in Error
and Appellants,
No. 2 Rector Street,
New York.

Supreme Court of the United States.

OCTOBER, TERM 1910.

VERISIMO VASQUEZ VILAS,
Plaintiff in error and Appellant,

vs.

THE CITY OF MANILA.

} No. 53.

ESPERANZA OTERO TRIGAS, ET AL.,
Plaintiffs in error and Appellants,

vs.

THE CITY OF MANILA.

} No. 54.

RICARDO AGUADO, *Appellant,*

vs.

THE CITY OF MANILA.

} No. 207.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE
PHILIPPINE ISLANDS.

PAUL CHARLTON,
Counsel for Appellee.

ISAAC ADAMS,
City Attorney of Manila,
Of Counsel.

BRIEF FOR DEFENDANT AND APPELLEE.

Statement.

For ease and clearness of statement, the municipality of Manila under Spanish sovereignty will be referred to as the *Ayuntamiento* of Manila; and, under the rule of the United States, as the *City* of Manila.

With slight corrections, the Introductory Statement and the Statement of Facts in the brief of Plaintiffs in Error and Appellants is a resume of the facts alleged in the petitions of Vilas (Rec. pp. 1-3), and Trigas (Rec. pp. 1-5), and the agreed Statement of Facts in the Aguado case (Rec. pp. 9-14).

Wherever amounts of money are claimed, or mentioned, however, the same are in Mexican and not Gold currency.

It is perhaps necessary to call the attention of the Court to the fact, alluded to, but not fully and clearly set out in the brief of Plaintiff in Error (p. 7), that for some months prior to the surrender of the City of Manila to the American forces, on August 13, 1898, the outlying, adjacent country including the pumping station of the water works, had been in the occupation and military control of the Filipino insurgents against the Spanish rule, and that the City of Manila was, practically, in a state of siege.

About June 28, 1898, the Spaniards abandoned the pumping station of the Manila water works to the insurgents, whose military forces thereafter held the station and adjacent territory in their military control, until driven from the same by the American forces, at the outbreak of hostilities between the Filipino and American forces, on February 4, 1899.

It will, therefore, be observed, that the coal furnished the

Pumping Station by Aguado, and the destruction of buildings in the Trigas case, was during the period, prior to August 13, 1898, when the City of Manila was captured by the American forces, and while the station, and the adjacent territory, was in the sole control of the Filipino forces, and that, therefore, the consumption or abstraction of the coal, the subject of the claim in the Aguado case, and the destruction of the property of Martinez, in the Trigas case, was *before* the territory where the damage was inflicted had come into the firm possession of the United States.

Again, it is stated in the brief of Plaintiff in Error, (p. 7), in the *Statement of Fact*:—"The City of Manila, as at present organized, *having succeeded to the rights and obligations* of the City of Manila, as existing under Spanish sovereignty * * *."

This is, obviously, a conclusion of law, covering the very point involved in the cases now before the Court, and not a statement of fact, nor a binding conclusion of law until made so by the judgment of this Court.

The real date of the granting of the original charter to the Ayuntamiento of Manila was June 28, 1571, and this was confirmed by the Viceroy of New Spain, at Mexico, on February 20, 1582, as is shown by reference to the original source (Zamora, *Legislacion Ultramarina*, Vol. 4, pp. 212-215).

The Philippine Islands were governed by the Viceroy of New Spain, under supervision of the Crown, from their occupation by the Spanish, until, in 1819, Mexico became independent of Spain, and commerce passed to Spain by the Cape of Good Hope, instead of through Mexico.

Numerous, and various, amendments were made to the original charter, and, on January 19, 1894, was proclaimed, by Royal Decree, an amendment, which amounted to a re-organization of the Ayuntamiento, the portions of which,

germane to the questions here presented, are as follows:

From the *Gazette* of Madrid, January 21, 1894.

ROYAL DECREE.

"In accordance with the recommendation of the Colonial Minister and with the concurrence of the Council of Ministers:

"In the Name of my August Son, the King, Alfonso the XIII, and as the Queen Regent of the Kingdom,

"I hereby decree the following:

* * * * *

"ARTICLE 8. The economic and administrative matters peculiar to the municipality of Manila shall be decided by the District Tribunals, the Ayuntamiento, the Alcalde, and the Governor General, as the case may be.

"The regulations will specifically prescribe the respective powers of such bodies and authorities, and the cases, terms and procedure in appeals.

"It shall be the duty of the General Direction of Civil Administration to prepare the resolutions of the Governor General in the matter of quintas, charities and public instruction of the Municipality of Manila.

"It shall also be the duty of such Direction to continuously inspect the municipal accounting service.

"ARTICLE 9. It shall be the duty of the Alcaldade to issue and publish proclamations and enforce their compliance, as well as compliance of the resolutions of the corporation on police, ornamentation, urbanization, surveillance, and safety, with all the powers and prerogatives vested in the Corregidores of Manila, by the Royal Decree which created such office, which will remain separate from that of the Civil Governor of the Province, the latter continuing to be vested with the powers pertaining to him as such Civil Governor.

"ARTICLE 10. The Ayuntamiento of Manila shall have powers and duties similar to those granted by the municipal law in force in the Peninsula, the provisions of which shall be adapted to those of this Decree by the

Governor General in the regulations which may be issued for its execution, in so far as advisable and applicable.

"ARTICLE 11. The Ayuntamiento of Manila shall annually prepare the general budgets of revenues and expenditures of the Municipality, including therein those corresponding to the District Tribunals, the Alcalde being the person under whose orders payments shall be made.

"The approval of these budgets, after having been examined and reported on by the General Direction of the Civil Administration, pertains to the Governor General, who may hear the Council of Administration.

"The regulations for the execution of this Decree shall contain the provisions relating to accounting, and those which may be applicable from the regulations in force in the Peninsula shall be adapted thereto as well as the special regulations relating to assets of towns in force in the Archipelago.

"ARTICLE 12. For the approval of works and the establishment of industries which affect urbanization of the municipal district or its roads, etc. (viabilidad), the approval of the Governor General shall be necessary, and he may in a proper case hear the opinion of the Advisory Board of Public Works.

"ARTICLE 13. In addition to ways and means prescribed and authorized for other towns by Royal Decree of May 19, 1893, the Ayuntamiento of Manila shall receive ten per cent of the amount collected in the Capitol from the tax for port works and the establishment of light houses, and said sum shall be applied exclusively to the maintenance and improvement of public works and esteros which said corporation now has under its charge.

"For the establishment of new municipal taxes, the Ayuntamiento shall first hear, through the Deputy Alcaldes, the Principalias of the Districts, and after a vote thereon shall have been taken by the corporation, they shall be submitted to the Governor General for approval, after the General Direction of the Civil Administration and the Council of Administration shall have reported thereon.

"The vote of the Ayuntamiento and the approval of the Governor General shall be sufficient for the operation of municipal services.

* * * * *

"Done in the Palace the 19th of January, 1894.

MARIA CRISTINA.

ANTONIO MAURA Y MONTANER,
Colonial Minister."

From the foregoing it will be noted that all acts of the Ayuntamiento were subject to the supervision and superior administrative control of the Governor General of the Philippines, and that all powers conferred by the Decree must be exercised in conformity to regulations, which the Governor General was authorized to draw and promulgate.

All budgets for expenditures on any account were subject to his revision.

The regulations authorized by the Decree were issued June 30, 1894, to be in effect July 1, 1894, and were published in the Manila Gazette of July 8, 1894.

They provided, among other things, the following:

(Gazette of Manila, July 8, 1894).

OFFICE OF THE GOVERNOR GENERAL OF THE PHILIPPINES,
CIVIL ADMINISTRATION.

Manila, June 30, 1894.

"Pursuant to the recommendation of the Director General of Civil Administration and in accordance with the report of the Council of Administration, I hereby decree the following:

"ARTICLE 1. The attached 'Organic Regulations for the Ayuntamiento of Manila,' which are to go into effect on July 1st next, are approved in a provisional manner.

* * * * *

"Let it be communicated and published, etc.

BLANCO."

"Organic Regulations of the Ayuntamiento of Manila.

* * * * *

"ART. 46. The Ayuntamiento is an economic administrative corporation and may exercise only the functions entrusted or vested in it by these regulations and other provisions in force or which may hereafter be enacted."

The Ayuntamiento has exclusive charge of the government and direction of the interests peculiar to the city, especially those relating to streets, water supply, trees, police, public buildings, etc., and it will enact police ordinances, etc. (Secs. 47-50).

SEC. 54 provides that the resolutions of the Ayuntamiento shall be enforceable at once, reserving any appeals which may be granted by these Regulations and other provisions in force.

The Ayuntamiento shall every year prepare a budget covering the expenditures to be made for any cause whatsoever. (Sec. 90).

The annual budgets shall contain the necessary items to cover the services referred to in section 48, and, in addition, appropriations for personnel, supplies, printing, subscriptions, etc. (Sec. 91).

SEC. 95 provides that "Three months before the beginning of the fiscal year the Ayuntamiento shall transmit to the Governor General the budgets of receipts and expenses which is to go into effect the next fiscal year, and it shall be prepared in accordance with the provisions of the Law of Accounting.

"It shall be approved by the Governor General after examination and report thereon by the Direction of the Civil Administration, and after hearing the council of administration, if said superior authority should deem it advisable or necessary.

* * * * *

"SEC. 98. When, for the purpose of meeting unforeseen expenses, to pay a debt or for any purpose of importance not determined in the ordinary budget, the appropriations made therein are insufficient, the Ayun-

tamiento shall prepare an extraordinary budget in the same form and employing the same procedure which is prescribed for ordinary budgets.

* * * * *

"SEC. 100. *Debts of the municipality of Manila, not secured by pledge or mortgage, cannot be enforced by compulsory process (execution).*

"When the municipality shall be adjudged to pay a sum of money, the Ayuntamiento shall, within ten days after the judgment shall have become final, prepare an extraordinary budget unless the creditor shall agree to postpone collection in order to permit the necessary sums to pay the principal and interest agreed on to be embodied in the successive ordinary budgets."

Sections 103 to 111 relate to the collections, and accounting for municipal funds.

The Alcalde must suspend resolutions of the Ayuntamiento when they relate to matters not under its jurisdiction or involve criminal liability (*delincuencia*), and he may suspend them in case of general interests being prejudiced or public order, but must report his action to the Civil Governor of the Province, who may approve or disapprove it, and in turn report to the Governor General (Sec. 112). The Alcalde shall also suspend the execution of a resolution when it affects the civil rights of a third person, upon the request of the latter (Sec. 113). Resolutions in matters under the jurisdiction of the Ayuntamiento cannot be suspended, but an appeal therefrom is granted any person, whether a resident of the city or not, who considers himself prejudiced thereby, to the Governor General, who shall hear the Civil Governor on the matter, and the appeal must be taken within thirty days from the date of service of notice or the publication of the resolution (Secs. 114). These appeals shall be filed with the Alcalde who shall forward the petition to the General Direction of the Civil Administration, through the Governor of the Province, within eight days, with such reports as he may consider proper, and when the

Governor General believes that the suspension does not lie, he shall immediately revoke the action of the Alcalde, or otherwise reverse the resolution of the Ayuntamiento which shall thereby be annulled. (Secs. 114-115).

From the foregoing it will also be noted that in all matters affecting the action of the Ayuntamiento, not only did the Governor General have administrative control, but a resident, not even necessarily a citizen, could appeal to the Governor General, in case he considered himself prejudiced by any action of the Ayuntamiento, and invoke his superior administrative control.

For reasons heretofore stated, it is impossible to set out in full the charter of the Ayuntamiento, but its powers, duties, and their limitations are sufficiently, and accurately, indicated by the foregoing Decree and Resolutions.

It was provided in Sec. 100 of the Regulations that *debts of the municipality of Manila, unsecured by pledge or mortgage, could not be collected by compulsory process* (execution), but that, after judgment, an extraordinary budget should be prepared by the Ayuntamiento, for their payment. Such action would be subject to the approval of the Governor General of himself, or, on appeal to him by a resident, to his similar action.

The City of Manila was specifically excepted from the operation of the Maura law, promulgated May 19, 1893, which provided for the organization and government of municipalities in the Philippine Islands.

The City of Manila was governed under a military Provost Marshal General of the City of Manila, from August 15, 1898 (See General Orders No. 4, Headquarters Department of the Pacific and Eighth Army Corps, August 15, 1898. (Appendix I.)

Pursuant to the instructions of the President of the

United States, dated April 7, 1900, and to the Executive Order of the President of the United States, dated June 21, 1901, there was enacted "by the authority of the President of the United States," by the Philippine Commission, its Act No. 183, being "An Act to incorporate the City of Manila," on July 31, 1901, under the provisions of which upon August 7, 1901, said charter went into effect and the Provost Marshal General turned over the city government to the Municipal Board appointed under the Charter by the Civil Governor with the consent of the Commission.

The charter, in its general lines, follows closely the plan of the legislation by which the City of Washington is governed. It is set out at length in Appendix II hereto.

Since said date the City of Manila has been administered under the charter so adopted, with the necessary amendments from time to time by legislation of the Philippine Commission, or by the Philippine Legislature since October 17, 1907.

It is provided that the government of the city shall be vested in a Municipal Board, consisting of five members to be appointed by the Governor General with the consent of the Commission, one member of which should be designated as president and, as such, authorized to sign all ordinances, resolutions, bonds, contracts and obligations made or authorized by the Board. (Act No. 183, sec. 4).

It was also provided that, subject to approval by the Governor General, the Municipal Board of the City of Manila should make all appropriations for the expenses of the government of said city (Act No. 183, sec. 15; Act No. 1765, sec. 1); and that the Board should take possession of all lands, buildings, offices, books, papers, records, moneys, credits, securities, assets, accounts, or other property or rights belonging to the former City of Manila or pertaining to the business of interests thereof * * *;

should collect taxes and other revenues, and apply the same in accordance with appropriations to the payment of municipal expenses; * * * should institute judicial proceedings to recover property and funds of the city wherever found or otherwise protect the interests of the city and should defend all suits against the city; should make such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred by this title, and to provide for the peace, order, safety, and general welfare of the city and its inhabitants * * * (Acts No. 183, sec. 16);

To *maintain* waterworks for the purpose of supplying water to the inhabitants of the city, to purify the source of supply, and regulate the control and use of the water, and to fix and collect rents therefor * * * (Act No. 183, sec. 17 (w); Act No. 1150, sec. 10).

The Auditor for the Philippine Islands receives and audits the accounts of the City of Manila (Act No. 183, sec. 18), and the Treasurer of the Philippine Islands receives and keeps all moneys arising from the revenues of the city of Manila, and expends the same upon warrants drawn in accordance with the provisions of law, which are priations, are deposited in the Insular Treasury (Act No. 183 sec. 19). All funds, whether collections or appropriations are deposited in the Insular Treasury (Act No. 183, sec. 29). All works or public improvements, the expense of which exceeds the sum of one thousand pesos, are let to an approved bidder, after due advertisement (Act No. 183, sec. 30).

ARGUMENT.

When on August 13, 1898, the City of Manila was reduced to the firm possession of the United States, and by the order of the supreme military commander, on August 15, 1898, was placed in the charge of the Provost Marshal General, to be administered, it was within the sovereign power of the United States, acting through the Executive, as Commander in Chief of the Army, to impose upon the conquered territory, including the City of Manila, any form of government which to him seemed proper and just.

In the exercise of such authority, a military—civil form of government was provided for the city from the date of its occupation, until August 7, 1901, on which date, by the enactment of a charter for the City of Manila by a commission with legislative powers, appointed by the President, a full civil municipal government was provided for said city.

Subsequently, and upon July 1, 1902, there was approved the Act of Congress known as the Organic Act of the Philippine Islands, which provided a civil government for said islands. (32 Stat. L., pt. 1, p. 691.)

In its section 1 it specifically ratified the act of the President in appointing the civil commission and all that had been done by said commission up to the date of the approval of said act, including legislation passed by it, among which was its Act No. 183 (Appendix II), being a charter for the City of Manila.

While another section of the Act (5) provided a Bill of Rights, the Organic Act was not retroactive in its force and effect, except when specifically made so (sec. 1) in confirming all acts done under the plenary authority of the Executive Order of the President as commander-in-chief.

No subsequent amendment of the charter of Manila has

materially changed its form of government or powers from that contained in the original charter of Act No. 183.

It will be instructive at this point to examine the ordinances and differences between the administration of the Ayuntamiento of Manila under the Royal Decree of January, 1894, and the regulations under the same, and the charter of Manila as provided in Philippine Act No. 183.

1. *As to Municipal Budgets.*—The Ayuntamiento was authorized and directed (Art. 11, R. D.) to prepare general budgets of revenues and expenditures, which were subject to the approval of the Governor General.

The Municipal Board of the City of Manila (Act No. 183, sec. 15) was authorized and directed to submit estimates for the expenses of the City of Manila, which were subject to the approval of the Commission to whom also annual reports of expenditures and receipts as well as estimates of future expenditures and receipts were required to be submitted for its concurrence or reformation.

2. *Municipal Taxes* were directed to be levied by the Ayuntamiento (R. D. art. 13), subject to the approval or reformation of the Governor General.

The Municipal Board of Manila was authorized and directed (sec. 17 (a)) to collect taxes for general and special purposes in accordance with law.

3. Each was charged with similar control of municipal activities such as streets, water, police, parks, public buildings, light, etc., (Ayuntamiento Regulations articles 47-50; City charter, sec. 17).

In each case the equivalent of the municipal board had similar powers and duties, and was subject to superior executive control in the exercise of the same.

It is significant, however, that while in the charter of the City of Manila (sec. 16) the municipal board was granted power to sue and defend proceedings in the courts to pro-

tect the interests of the city, its authority in that regard extended no further, nor is there any provision, other than generally applicable municipal law, as to the payment of a liability when established by a judgment of a court, except that (sec. 15) it is provided that *all* appropriations shall be made by the Commission.

Section 100 of the regulations applying to the Royal Decree of January 19, 1894, however, provides:

“Debts of the municipality of Manila, not secured by pledge or mortgage, cannot be enforced by compulsory process (execution),”

but that in case of a money judgment against it, it was directed to prepare an extraordinary budget to cover the same, which was subject to the approval of the Governor General before it could be paid.

This was a limitation of liability, in effect at the time the acts complained of by the appellants occurred, all of which were long prior to the acquisition of the City of Manila and its environs, whether by conquest (Aug. 13, 1898; February 4, 1899), or by cession under the Treaty of Paris (April 11, 1899).

When the United States captured the City of Manila, and the territory comprising the Philippine Islands, it took all public property therein contained as a conquering sovereignty. Subsequently, and as an act of grace, it engaged to pay, under the Treaty of Paris Article III, and did pay, to the Crown of Spain the sum of twenty million dollars, in full compensation, as is disclosed by Protocols accompanying the Treaty (Sen. Doc. 62, Part 1, 55 Cong. 3rd sess. pp. 216, 218, 240, 241, 258-262), not only for all public property such as buildings, port works, light houses, public utilities, etc., but also for all claims of persons resident in

the Philippine Islands which might exist in favor of such citizens and as against the Spanish Government, or its instrumentalities.

In Article VII of the Treaty of Paris the United States engaged to adjudicate and settle the claims of its citizens against Spain relinquished in said article. This engagement was made without any reciprocal engagement on the part of Spain to adjudicate and settle the claims of its citizens, which were, as the Protocols indicate, presumed to be included in the objects for which the payment of twenty million dollars (Article III) was to be made. Presumably, Spanish citizens were relegated for relief to the ordinary courts of Spain, if any court therein was clothed with jurisdiction to give relief against the sovereignty.

There is no engagement in the Treaty on the part of the United States to adjudicate and settle claims of Spanish subjects, against either of the parties to the Treaty, arising out of the war, wherever they might reside, and no allegation, even, in the record herein, that any of the claimants are citizens of the Philippine Islands, owing allegiance to the United States.

Undoubtedly the "property" intended to be covered by a definition of that word as contained in Article VIII of the Treaty, was such as was possessed by the claimant as a *vested* interest or title. A *vested interest* is "an immediate, fixed right of present or future enjoyment." (Ferne, Cont. Rem. 2.)

Could such definition and status be given to a mere claim, even though founded on a contract, which, before its final settlement, would be subject to the scrutiny and administrative reformation provided for in the important amendment to the charter of the Ayuntamiento by the Royal Decree of January 19, 1894, and the Regulations effectuating the same, *supra*.

A "claim" has been defined by this court to be "the assertion of a liability to the party making it to do some service or pay a sum of money." (Bouv. Law Dict.; 13 Pet. 539.)

Granting the facts in these cases to be as stated and agreed, they clearly bring the rights of appellants under them within the foregoing definition. And, as clearly, exclude them from any possible definition of "property" as contemplated in Article VIII of the Treaty.

An examination of the Protocols of the Treaty of Paris (Sen. Doc. 62, Part 1, 55 Cong. 3rd sess.) cannot fail to inspire any American with respect for the justice and ability with which the contentions which arose were met, nor could the moderation of a conquering nation go further in delicate regard for the feeling of those humiliated by conquest, nor in generous restraint from imposing an onerous burden as a result thereof.

A reading of the Protocols, however, discloses that advantage was attempted to be taken of the attitude of our commissioners, in proposals for aggrandizement and relief of the Peninsular Government for purposes entirely disconnected with the colonies of Spain, and the firmness and ability with which these proposals were dissected and rejected have won the admiration and respect of all who have examined them.

POINT I

JURISDICTION OF THIS COURT.

The Vilas case.—An examination of the record in the Vilas case discloses the fact to be that the pleading filed by plaintiff in error and appellant contains no allegation or claim of liability on the part of the City of Manila arising

out of the Treaty of Paris, nor is said treaty named in the petition filed therein. (Rec. pp. 1-3).

A demurrer was interposed on behalf of the City of Manila on the ground that the facts alleged were not sufficient to constitute a cause of action (Rec. p. 3); after hearing, the plaintiff in error in open court stating that he did not desire to amend his complaint, the demurrer was sustained and the action dismissed (Rec. p. 4); the errors assigned by plaintiff in error and appellant in the Supreme Court of the Philippine Islands were (1) that the court erred in sustaining the demurrer and (2) that the court erred in dismissing the complaint (Rec. p. 6); the case was submitted to the Supreme Court of the Philippine Islands with the issues in the condition stated, and the decision of the lower court was by it affirmed (Rec. p. 7). Plaintiff in error and appellant then filed a petition for a rehearing (Rec. pp. 7, 8) and, for the first time in said petition, there was raised the question of liability under Article VIII of the Treaty of Paris. The petition for a rehearing was denied (Rec. p. 8) and the plaintiff in error and appellant in his assignment of errors to this court avers that the decision of the Supreme Court is in violation of Article VIII of the Treaty of Paris.

It is respectfully submitted that this court is without jurisdiction to hear and determine the contentions of Vilas, for the reason that no question involving the Constitution, or a law, or a treaty of the United States was raised or alleged in the issues presented to the court of first instance of the Philippine Islands, or to the Supreme Court of the Philippine Islands, before the final determination of the action, and for the further reason that the amount involved is greatly less than the jurisdictional amount required by law, the same being \$4,920.00, Mexican currency, with interest at 6% from July 1, 1898.

The Trigas case.—In this case no claim is set up in the petition filed in the court of first instance of any liability on the part of the City of Manila under the Treaty of Paris, or any article thereof, and the amount claimed is about the sum of \$7,000, gold, with interest at 6% from August 31, 1898. A demurrer was interposed to the petition of plaintiff on various grounds,—among which were misjoinder of causes of action, i. e., contract and tort; insufficient facts to constitute a cause of action, etc. (Rec. pp. 1-6). The court, in sustaining the demurrer of the City of Manila, states (Rec. p. 8):

“The plaintiffs apparently rely for recovery upon Act 183 of the United States Philippine Commission, known as the Charter of the City of Manila, claiming that it took over all property of the former City of Manila and became liable for all of its obligations, and further upon the provisions of the Treaty of Paris.”

The foregoing portion of the opinion of the judge of the court of first instance is *obiter* as not being apposite to any issue clearly raised by the pleadings, and, therefore, should be disregarded. The errors assigned on appeal to the Supreme Court of the Philippine Islands are on the sustaining of the demurrer and the dismissal of the complaint. On hearing before the Supreme Court, that court quoted in full the decision in the court of first instance and concluded:

“For the reasons given in cause No. 3283, Ricardo Aguado *v.* the City of Manila, the decision of the lower court is hereby affirmed.”

The Supreme Court of the Philippine Islands in adopting that portion of the decision of the Court of first instance above quoted, makes it *obiter* of the Supreme Court for the reasons heretofore given (Rec. pp. 11, 12). The claim of

liability under the treaty against the City of Manila is made for the first time in the petition for a rehearing (Rec. pp. 12-13), and this petition was overruled.

It is respectfully submitted that the contention comes too late when made for the first time, and as an apparent afterthought suggested by *obiter* in the opinion of the court, when made after the final decision by the Supreme Court of the Philippine Islands. There was then presented in this case at no time before its final determination any question involving the Constitution, or a law, or a treaty of the United States, and the amount claimed is less than the jurisdictional amount required by law.

In the *Aguado* case an attempt is made to impress a trust upon a particular item of property belonging to the City of Manila, to-wit, certain shares of the capital stock of the Banco-Espanol Filipino, as being a portion of the Carriedo Water Works fund, and allegation is made that the City of Manila is liable for the debts of the Ayuntamiento of Manila, and that, therefore, said shares of bank stock, as constituting a portion of the trust to which the City of Manila succeeded, must be responsive to the claim of appellant. But nowhere in the petition of Aguado (Rec. pp. 1-7) is any claim made which is based upon any article of the Treaty of Paris; nor is any such recital or claim made in the agreed Statement of Facts in said case. (Rec. pp. 9-14). The prayer of the petition is for judgment against the City of Manila as trustee and administrator of the Carriedo Water Works, in the sum of 5621.40 pesos Mexican currency, with interest, and for general relief. Nowhere in the answer of the defendant and appellee, in the Court of First Instance, could any admission or denial have been made of a claim not pleaded or a cause of action not set out, and none was made. The opinion of the Judge of the Court of First Instance (Rec. pp. 40-41) turns solely upon the question of whether the City of Manila was liable as a trustee and the successor

of the Ayuntamiento of Manila, and ordered execution to issue and be levied upon lands admitted in the Statement of Facts to be attached to the Carriedo Water Works, operated by the City of Manila, and also to be levied upon the shares of stock in the Banco Espanol-Filipino.

Thereafter (Rec. pp. 41-42) the City of Manila, defendant above, made a motion for a new trial of said cause in the Court of First Instance, which was denied, and took the case on error and bill of exceptions to the Supreme Court of the Philippine Islands.

The Supreme Court of the Philippine Islands, after setting out the agreed Statement of Facts in the case, and the judgment of the court below, also set out (Rec. pp. 48-49) the errors assigned by the City of Manila, appellant and defendant below. It nowhere appears in the opinion of the Court of First Instance (Rec. 40-41) that the Treaty of Paris, or any of its provisions, was presented by the pleadings or argued in that court. For the first time the question of an obligation under the Treaty appears in the opinion in the Supreme Court of the Philippine Islands (Rec. p. 51), in the following words:

"Our attention is called to Article VIII of the Treaty of Paris. But this is a compact between the United States Government and the Crown of Spain, and of course the City of Manila could not, if it would, be obligated by any terms of that compact without an express authorization on the part of the proper power or authority."

No such authority or power is granted under the charter of the City of Manila. (P. I. Act No. 183, Appendix II.)

The plaintiff and appellee, Aguado, (here appellant), moved for a re-hearing in the Supreme Court of the Philippine Islands, but in his motion in that behalf makes no allegation as to a liability being fixed on the City of Manila under any article of the Treaty of Paris. (Rec. 52-53).

It is in the assignments of error on appeal to this Court, that a claim of error is specifically based on a denial of rights conferred on appellant by the provisions of the Treaty of Paris, as follows:

"The Court erred in holding that the contracts herein in question are not governed by the terms and conditions of the Treaty of Paris of December 10, 1898.

"8. The Court erred in refusing to hold that the rights acquired by plaintiff under and by virtue of the contracts herein in question are vested rights assured, confirmed, and guaranteed respect by said Treaty of Paris of December 10, 1898."

The declaration in the opinion of the Supreme Court of the Philippine Islands *supra* (Rec. p. 51) was clearly *obiter* as not being presented for the consideration of that court either on the record as it came from the court below, or the opinion of the Judge of the court below, if that could be apposite, or of force. It must, therefore, be considered as a mere *dictum*, lacking the force of a judicial determination, and the amount claimed by appellant is far below that fixed by law as conferring jurisdiction upon this Court, on that ground.

It is, therefore, respectfully submitted that, under the record as it stands, this Court is without jurisdiction to hear and determine any of the causes now here before it, for the reasons above stated.

The following authorities are cited in support of the foregoing:

"*Obiter dicta* are opinions not called for by the case."

U. S. Ex. Rel. Johnston *vs.* County Court, 96 U. S. 211

"The doctrine of *stare decisis* is a salutary one, but it only arises in respect of decisions directly upon the points in issue."

Pollock *vs.* Farmers' L. & T. Co. (Income Tax Cases). 157 U. S. 429.

POINT II

THE OBLIGATIONS OF THE AYUNTAMIENTO OF MANILA WERE NOT IMPAIRED BY THE CHANGE OF SOVEREIGNTY BUT WERE PRESERVED BY THE TREATY AND EXPRESSLY RECOGNIZED BY THE UNITED STATES GOVERNMENT.

It is not wholly correct to say, as is stated in the brief of plaintiffs in error and appellants, that—

“The court below held in effect that with the extinction of Spanish sovereignty in the Philippines, the corporate existence of the City of Manila was itself extinguished and its obligations thereby ceased to be binding upon the community under the new sovereignty and under such new form of organization as might be provided for the community.” (Rec. p. 7.)

In the *Vilas case* the Supreme Court affirmed the decision of the court below and dismissed the cause, and based its decision upon that in the *Aguado case*.

In the *Trigas case*, the court contents itself with saying (Rec. pp. 11, 12):

“I am of the opinion that no reasonable construction of this section (P. I. Act, 183, sec. 1) could place upon the defendant (the City of Manila), the obligation to satisfy the liability of the former City of Manila under Spanish sovereignty. The United States obtained from Spain the cession of all buildings and other immovable property belonging to the Crown of Spain in the Philippine Islands for a consideration which was paid and was in every sense justified in creating a municipality as a successor to the former City of Manila and of delivering to it the property purchased without rendering it liable in any way for the value thereof or responsible in any way for the debts of its predecessor.

"The plaintiff may have a claim against the Crown of Spain which has received from the United States payment for that done by the plaintiff." (Rec. pp. 11, 12).

In the *Aguado case*, the claim made and the issues raised were somewhat different. There the attempt was to impose upon the City of Manila, as successor to the Ayuntamiento of Manila, the obligation as *trustee* to respond to a claim which was not secured by pledge or mortgage and for the satisfaction of which, therefore, under section 100 of the regulations effectuating the Royal Decree of January 19, 1894, *supra*, no satisfaction could have been had by compulsory process (execution directed against either its real estate or personal property constituting a portion of the resources of the "Carriedo Water Works," which was merely the name of the water system of Manila, as, similarly, the water works of New York City are called the "Croton Water Works." The public utility known as the "Carriedo Water Works," operated by the Ayuntamiento of Manila, has been constructed not only with funds accumulated in the Carriedo trust, but, and to a very large degree, with funds contributed by the Ayuntamiento, or the general government, from other resources. It is clearly apparent from the phraseology of the translation "Carriedo and his works," (Rec., pp. 14-25), that, while constructed jointly with funds of the Carriedo trust and general governmental funds, it was so named in order that the name of Carriedo should be perpetuated. This was not made obligatory under the will of Carriedo, but a familiar illustration in the United States is that such libraries as are the beneficiaries of a well-known philanthropist all bear his name, in perpetuation of his donation; but neither the buildings so named nor the books which they contain are owned by him, and in the deeds of gift of such benefactions, restrictive clauses are introduced similar to

those contained in the will of Carriedo, among which is the following (Rec., p. 16, fol. 31):

"Item. That in no manner, either now or at any time, shall this fund or its products be touched, even though necessary and most urgent reasons therefor are offered. * * * And for greater clearness and understanding of the foregoing clauses, that in no case or event, however grave and necessary, shall the said disposition be interpreted, arbitrated nor increased, but that the same must be fulfilled and carried out to the letter as it is set forth without any ambiguity for interpretation."

It is not controverted that a municipal corporation has a dual character; its functions are both governmental and political, and quasi-private. Governmental and public for the reason that it substitutes uniform and just rules for the administration of common utilities and provides just means by which the charges thereof may be defrayed. In its quasi-private capacity, its powers are held and exercised as a quasi-individual, legal entity.

That question is entirely beside the one here under consideration. It is not germane to the inquiry to raise the moot question whether or not the legislature of the State of New York could abolish the charter of the City of New York. That it could amend it in material ways is shown by the fact that within a very few years the whole municipal division of the territory constituting the City of New York was changed, and at the same time vital major changes were also made in its officers and in the manner in which the population of the city divided into boroughs, was governed and administered.

The question presented for the consideration of the court is as to *what effect an absolute change of sovereignty has upon the subsidiary instrumentalities of government existing at the time of the change of sovereignty*. It has been held

by this court that Royal grants of Spain ceased to be operative or binding when the sovereignty of Spain ceased to be operative in the sphere of its exercise. The charter of the Ayuntamiento of Manila proceeded from Royal Grants of Spain, and was under the superior executive-administrative control of the Governor General, appointed by the Crown of Spain, and not selected by the suffrage of the population composing the Ayuntamiento of Manila as then constituted. The extension of sovereignty over territory can have no other meaning than that the exercise of sovereignty necessarily includes the right to establish necessary subsidiary governmental and administrative instrumentalities. It is as clear and obvious that such sovereignty includes within it the right to sole decision as to the character and constitution of such instrumentalities, and the participation of the inhabitants of the territory in the direction or administration thereof.

Every military order issued from the time the Philippine Islands passed into the firm possession of the United States, the letter of instructions of the President to the Civil Commission, the laws of Congress enacted in relation to the Philippine Islands, all point to the fact that the main concern was to give to the inhabitants of the Islands a humane, enlightened, stable and just government. Among the measures taken to that end was the enactment by the Philippine Commission of the charter of the City of Manila (Appendix II). Such action, and the form of government prescribed thereby, were specifically approved by the Congress of the United States in the Act of July 1, 1902, section 1.

The inhabitants of those Islands had no right to determine for themselves the form of general or municipal government which should be put in operation; that was the prerogative of the sovereignty and was so exercised.

Nowhere in the existing charter of the City of Manila can be found any power or authority conferred upon any in-

strumentality of its government to assume obligations of a former municipality which absolutely disappeared as a municipal governmental entity upon the capture of the city, and for whose property the former sovereign power (Spain) received a money payment, no part of which went to the persons inhabiting said city at the date of the surrender, all of whom were either aliens, or subjects of Spain, either as gift or reimbursement, except amounts, if any, which may have been recovered in the courts of Peninsular Spain, against that Government.

The citation from the opinion of the Honorable Elihu Root, then Secretary of War, upon a claim similar to those here proposed (plaintiff's brief, pp. 26, 27), scarcely bears out the contention of counsel for plaintiffs in error, in that the only important statement contained in the quotation is the following:

"The questions involved are usually resolved by judicial proceedings. Therefore, the parties secure an adequate remedy by applying to the courts."

So far as records show, no claim of a character similar to those here under consideration has ever received payment as a result of executive recommendation of the government of the United States, and the authorities quoted in the brief of plaintiffs in error (pp. 27-30), do not bear out the statement that (p 30):

"The ruling made by the Philippine Supreme Court upon this question was therefore absolutely at variance with the whole course of decision of this Court and with the position which has been uniformly taken by the political department of the United States."

It is respectfully submitted, however, that the question as to what constitutes "property," as that word was used in

Article VIII of the Treaty of Paris, has already received the conclusive determination of this court.

The case of *O'Reilly de Camara v. Brooke*, 209 U. S. 45, arose upon facts which showed that the holder of a heritable office in Cuba, which had been abolished prior to the extinction of Spanish sovereignty, pending compensation for its condemnation, was receiving the emoluments of one of the grants of the office.

The whole question as to what was, and what was not, included within the term "property" as used in Article VIII of the Treaty of Paris, was there fully and ably argued to this court, and in its judgment affirming the decision of the district court, this Court (pp. 52, 53), in relation to this question, says:

"* * * We agree with the opinion of the Secretary of War that the plaintiff had no property that survived the extinction of the sovereignty of Spain. The emoluments to which she claims a right were merely the incident of an office, and were left in her hands only until the proceedings for condemnation of the office should be completed and she should be paid. The right to the office was the foundation of the right to the emoluments. Whether the office was or was not extinguished in the sense that it no longer could be exercised, the right remained so far that it was to be paid for, and if it had been paid for the right to the emoluments would have ceased. If the right to the office or to compensation for the loss of it was extinguished, all the plaintiff's rights were at an end. No ground is disclosed in the bill for treating the right to slaughter cattle as having become a hereditament independent of its source. *But of course the right to the office or to be paid for it did not exist as against the United States Government, and unless it did the plaintiff's case is at an end.*"

If we apply the touch-stone of this illuminating decision

to the facts of these cases, the controlling force of the decision upon them becomes at once apparent.

In the *O'Reilly case* the facts leaned much more strongly to a determination that the right there claimed could be included in the word "property" as used in Article VIII of the treaty, for it arose from a Royal grant of Spain, heritable in its character, and constituted a vested interest until divested by the act of the authority by which it was created. The divestiture was, however, not fully complete until full payment of the consideration therefor had been made.

If, under such circumstances, this Court was of opinion that they did not bring the claim of O'Reilly within the definition of the word "property" as used in the Treaty, how could it be said that claims based upon the facts admitted in these cases, all of which were temporary in their nature, subject to revision and reformation by superior executive control, which would cease, as in the *O'Reilly case*, when payment had been made; and, in such event, all the rights of the plaintiffs in error would be at an end, could be "property," as that word is used in the Treaty? The comparison leads inevitably to the conclusion that, under the facts as disclosed in the cases under consideration, the same test as was applied in the *O'Reilly case* would result in the same decision of this Court.

A contract for furnishing coal, or for collecting taxes for one year, or for furnishing material or performing labor, all of which would be concluded, and all rights thereunder extinguished, by payment or by lapse of time, were clearly not such "property" as was in the mind of the Commissioners who concluded the Treaty of Paris, as is abundantly shown by the discussions contained in the Protocols thereto.

It is noted, as a fact pregnant with significance, that the Treaty itself, especially as illuminated by the Protocols, makes clear distinction between the relation which the

United States was willing to assume toward the Island of Cuba and its affairs, and that which it was willing to assume toward the Philippine Islands and their affairs. For, with relation to Cuba, it is provided in Article I as follows :

"Spain relinquishes all claim of sovereignty over and title to Cuba.

"And as the island is, upon its evacuation by Spain, to be occupied by the United States, THE UNITED STATES WILL, SO LONG AS SUCH OCCUPATION SHALL LAST, ASSUME AND DISCHARGE THE OBLIGATIONS THAT MAY UNDER INTERNATIONAL LAW RESULT FROM THE FACT OF ITS OCCUPATION. FOR THE PROTECTION OF LIFE AND PROPERTY."

Note, now, the distinction between the engagement entered into in Article I with relation to Cuba, and that entered into in Article III, in relation to the Philippines :

"Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line : (describing the same by points of latitude and longitude).

"The United States will pay to Spain the sum of twenty million dollars (\$20,000,000) within three months after the exchange of the ratifications of the present treaty."

In the one case, that of Cuba, the United States made no monetary compensation for property captured by it, for the reason that its occupation was declared to be temporary and not permanent in its intention. It went further, however, in the clemency of its justice, in the engagement to hold itself responsible for every obligation resultant from its occupation which could rightfully be imposed under the principles of international law.

In the case of the Philippines, the cession was for a de-

clared price, which was paid. There was no engagement to become responsible, internationally, for any obligation imposed under the principles of international law, or otherwise. It was an outright purchase and sale, an act of grace on the part of a conqueror. And while in Article VII the United States undertook to settle and adjudicate the claims of its citizens against Spain, in the mutual relinquishment contained in Article VII,—it engaged, in Article VIII, to respect property or rights belonging to the *peaceful possession* of property of all kinds, of corporations, of provinces, or municipalities, or public or private bodies, or of individuals.

The words "property" or "rights" there guaranteed were, specifically, those which related to the *peaceful possession* of property of all kinds.

It is submitted that the right to the *peaceful possession* of no property alleged to belong to plaintiffs in error herein has been impaired by the action which has been taken by the present City of Manila, as no action of any kind has been had with relation to these claims, or any of them, by the City of Manila, since the date of the American occupation, August 13, 1898, now more than twelve years ago.

As was pointed out in the decision of the Supreme Court of the Philippine Islands in the *Trigas* case, (Rec., p. 12, fol. 18), the plaintiff may have a claim against the Crown of Spain, which has received from the United States payment for that done by the plaintiff.

The United States has scrupulously fulfilled the obligation it assumed in Articles I and VII of the Treaty, with relation to its responsibility for obligations incurred during its occupation of Cuba, and in the settlement and adjudication of claims of its citizens for damages specified in said Article VII. The Spanish Treaty Claims Commission was organized, has performed the functions of its creation, and has

been dissolved; no claim which could rightfully arise under the obligation assumed in those Articles of the Treaty remains undetermined.

POINT III

THE CITY OF MANILA, AS AT PRESENT CONSTITUTED, IS THE SUCCESSOR OF THE CITY OF MANILA AS EXISTING UNDER SPANISH SOVEREIGNTY, IN RESPECT TO BOTH ITS RIGHTS AND OBLIGATIONS, AND IS THEREFORE LIABLE FOR THE DEBTS OF THE MUNICIPALITY WHICH WERE OUTSTANDING AT THE TIME OF THE CESSION.

An examination of the authorities cited in support of this Point in the brief of plaintiffs in error (pp. 31-42) shows them to be wholly inapplicable. In that an examination of them shows that each case arose under the exercise *by the same sovereignty, i. e. the State*, of the power to change a charter which it, *i. e. the same State*, had granted to the municipal corporation. While there may have been changes in the amount of territory embraced within the municipal boundaries, and while the nomenclature, even, of the municipality might have been changed, the exercise by a State of its authority to amend that which it originally granted can be subject, and the courts so hold, only to inhibitions of action contrary to the respective Bills of Rights of the States, as impairing the validity of contracts, or destroying interests which had become vested in defendants under the provisions of legislative enactments of the same sovereignty. The inappropriateness of the citations is apparent from a mere statement of the case.

Here, however, was a substitution of an absolutely new

sovereignty, which, in its legislation, was controlled by no constitutional provisions, or inhibition. It is otherwise, for instance, with the legislation of the new State of Oklahoma, erected upon territory never before under the sovereignty of a State, which is limited in its scope and character by the provisions of the Constitution of that State, containing, as it does, a Bill of Rights.

At the time of the acquisition of sovereignty by the United States over the Philippine Islands, the inhabitants thereof had only such rights as were granted by the grace of the United States, and later, such as were secured to them under the Treaty of Paris, and the Organic Act (July 1, 1902), and its amendments.

The charter of the present City of Manila (Appendix II) was granted by legislative enactment of the Philippine Commission, acting under executive authority of the President, which was, retroactively, confirmed by the Act of Congress of July 1, 1902; previous to which date the persons and property of inhabitants of the Philippine Islands were not dependent for their security upon a Bill of Rights which was enacted therein, but only upon the grace and natural justice of the sovereignty of the United States.

The paraphrase of Article VIII of the Treaty of Paris, contained in plaintiff's brief (pp. 36-37), is interesting as an example of orthographic dexterity, but unfortunate in containing expressions and conclusions which are neither justified, in actuality, by the phraseology of the Article as it exists as law, nor, by inference, which can only rightly be drawn from the Protocols concerning the article in question. (Sen. Doc. 62, Part 1, 55 Cong. 2d sess.)

It is only proper to say that counsel for plaintiff in error justifies this paraphrase by the conclusions of this, and other, courts upon authorities cited in support of his point, which, it is respectfully urged, can have no possible application to the facts under consideration.

POINT IV

THE JURISTIC PERSONALITY OF MUNICIPAL CORPORATIONS AND THEIR LIABILITY TO SUIT WERE RECOGNIZED AND ESTABLISHED BY THE ROMAN LAW AND THE SPANISH LAW, BOTH ANCIENT AND MODERN.

Under this Point the able counsel for plaintiffs in error, with customary industry and learning, has interested and instructed us by citations from the sources of the Roman and the Spanish Law.

Aside from the purely antiquarian interest which they excite, it is not observed what useful purpose they can subserve for the information of the Court in the consideration of these cases.

Justinian in his Digest laid down certain rules which have been the guide of those who have followed in the development of the Civil Law. The Paridas, the Novisima Recopilacion, and the Laws of the Indies were promulgated in the ancient days, and, so far as they have not been repealed or annulled by subsequent legislation of the sovereignty of Spain, are not only useful for information, but controlling as authority.

However, in this case, the laws and regulations governing the administration of the Ayuntamiento of Manila have been fully set forth in the discussion in a former portion of this brief, and consist of the Royal Decree of Spain promulgated January 19, 1894, being a new charter for the government of the Ayuntamiento of Manila, and the Regulations issued in effectuation thereof dated June 30, 1894. These were specific, and replaced and repealed, and annulled all prior provisions covering the subject matter which was touched by them, or in conflict with the provisions thereof.

The Dictionary of Alcubilla was published in the year

1892, and was followed by annual supplements. If the industry of counsel for plaintiffs in error had led him to examine the annual supplement for the year 1894, he would have discovered, on page 241 of the supplement for 1894, the following:

"Ayuntamientos in the Philippines (Manila).

R. D. January 5.

"(Colonial Department). This Decree extended the Municipality of Manila by annexing thereto adjacent towns which at the time formed suburbs thereof; it divided it into eleven districts, each of which was under the charge of a member of the council who was a deputy alcalde; it reorganized the Ayuntamiento of the city and prescribed its composition, the respective powers thereof and those of the district councils (tribunales), the alcaldes, and the governor general; and it made provision for municipal budgets, sources of revenue, etc., etc. (Gazette de Madrid—January 21.)

When the foregoing had come to his notice, an examination of the Gazette of Madrid for the proper date would have informed him, in detail, and *in extenso*, of the provisions of the Decree which are set out in detail hereinbefore; and if he had pursued his inquiry to a conclusion, there would have been brought to his notice the regulations issued under authority of said Royal Decree, promulgated in effectuation of its provisions.

POINT V

THE PLAINTIFFS ARE ENTITLED TO THE REMEDIES OF JUDGMENT AND EXECUTION FOR THE ENFORCEMENT OF THEIR CLAIMS.

Under this point, in their brief (p. 51), counsel for plaintiffs in error state a new doctrine of law, viz., that the property of the municipality, real, personal or mixed, is subject to an executi^{on} levied upon such portions of the same as are not necessary for the carrying out of the municipal purposes, or are not held in trust for the public.

However this may be, no such right existed in favor of plaintiffs in error at the time the indebtedness under which they claim was alleged to have been created. For, as has heretofore been pointed out in this brief, section 100 of the Regulations effectuating the Royal Decree of January 19, 1894, provided that no compulsory process (execution) could issue in aid of recovery of debts due by the Ayuntamiento of Manila; and, further, that for the satisfaction of amounts adjudged to be due by the Ayuntamiento, a special budget should be proposed, which could be approved, reformed, or disapproved by the Governor General, in his discretion. So that the right claimed to exist under this point in favor of plaintiffs in error, is conclusively shown not to have existed.

While it is true that, under the present charter of the City of Manila (Appendix II, sec. 16), the City of Manila is authorized and directed to sue and defend actions in protection of the interests of the same, there is no provision for the satisfaction of amounts adjudged to be due by the decree of a court, except by appropriation for the payment thereof, which must originate in the Philippine Commission, and not in the Municipal Board of the City of Manila.

That this is the law is conclusively shown in the case of *Hoey v. Baldwin*, 1 Phil. Rep. 551. In this case, the petitioner, Hoey, was an employee of the City of Manila; the

defendant was the disbursing officer of the said city; the Commission appropriated a sufficient sum of money to pay the salary of petitioner, which sum was in the possession of the respondent as disbursing officer; the petitioner had duly performed his duties for which the claim for payment was made; the respondent, as disbursing officer, refused to make payment to the petitioner of his said claim.

In the course of the opinion (pp. 557,558), the court says:

"Assuming that such an action could be maintained by the plaintiff we find no provision in the Charter of Manila relating to the payment of judgments which may be obtained against the city. The city has no control over its revenue. All of it, as fast as it is received, is paid to the Insular Treasurer. Before the city can use any of its money for the purpose of paying judgments against it or for any other purpose, the Commission must pass a law specifically appropriating the money. After the money has been appropriated it can not be withdrawn without the consent of the Civil Governor and the Insular Auditor.

"Should the plaintiff recover a judgment against the city he would have to procure the enactment by the Commission of a law appropriating money to pay it. He then would have to get the head of the Department of Fires and Building Inspection to make a requisition for this sum, the Civil Governor to approve it, the Insular Auditor to allow it, and the disbursing officer of the city to pay it. He might be met with a refusal at each of these steps, and after they had all been taken he might find himself where he is today by the refusal of the last named officer to pay him the money. It is not necessary to consider authorities from the United States. It is enough to say that such a remedy is certainly not a speedy one and there is difficulty in calling it a plain one."

Here it will be observed that the appropriation had been made in the manner prescribed by law, and that the money

to pay the claim of petitioner, for services shown and admitted to have been performed, was in the hands of the proper disbursing officer. His payment was held by the court under these circumstances, to be a purely ministerial act.

It is needless to point out the different circumstances between the facts of the case just mentioned and any possible facts in the cases at bar. In this portion of the opinion of the court, just above quoted, it is clearly pointed out:—That assuming that claimants had a right of action against the City of Manila, the city has no control over its revenues; that before the city could use any of its money for the purpose of paying judgments against it, or for any other purpose, the Commission must make a specific appropriation; and that after such specific appropriation, no money could be withdrawn from the funds in possession of the Insular Treasurer, except by consent of the Governor General and the Insular Auditor.

Therefore, neither under the law as it existed, with relation to the Ayuntamiento of Manila, in the period from July 1, 1894, to August 13, 1898, within which period the claims alleged by plaintiffs in error would seem to have originated, did a legal remedy exist for the enforcement of payment of the same, even after judgment, by compulsory process. The method provided was similar to that now in force; namely, by the submission of a special budget, prepared by the Municipal Board, to the Governor General, and his superior, executive-administrative action on the same. Similarly, it is clearly shown by the case of *Hoey v. Baldwin*, *supra*, that no such relief has existed in favor of a claimant or a judgment creditor since the adoption of the present charter of the City of Manila, (Appendix II).

It is respectfully stated that the foregoing is not advanced as the argument of inconvenience; but, as a municipality has only such *implied* powers as are necessary to effectuate the

specific grants of its Charter, and as the Charter of the City of Manila (Appendix II) neither contains any authority to assume the obligations of the Ayuntamiento of Manila, nor any words which, by necessary legal implication, could be held to include such authority or obligation, no right existed in favor of Plaintiffs in Error which the City of Manila had either authority or obligation to satisfy.

POINT VI

THE CITY OF MANILA HOLDS THE CARRIEDO FUND AS A TRUSTEE AND SUCH FUND IS LIABLE FOR OBLIGATIONS INCURRED IN THE ADMINISTRATION OF THE CARRIEDO WATER WORKS.

In the consideration of this Point it will be useful to examine, in detail (1) what the specific trusts alleged to have been created by the will of Carriedo were; (2) in what manner they have been fulfilled; (3) upon the change of sovereignty was the United States, under the terms of the trust, charged with an obligation as trustee; (4) if so, is there any property now in existence, charged with the responsibility of the satisfaction of the claims of plaintiffs in error, or any of them.

(1) Specific trusts in the will of Carriedo.

(a) The accumulation of the original donation of 10,000 pesos, by the increment of investment, to the sum of 30,000 pesos (Aguado Rec. pp. 15-18); when, by such increment, the fund had reached the sum of 30,000 pesos, 24,000 pesos of said amount should be used in completing and the final perfection of the work of bringing water from San Pedro Macati to the City of Manila (Aguado Rec. p. 15, Fol. 29; Id. p. 18, Fol. 30-34.)

This was clearly a trust for *construction*, and not for *maintenance*. Nowhere either in the testamentary clauses of Carriedo (Aguado Rec. p. 15, Fol. 29), nor in the declaration of trust (Fidei Comisario), can be found any obligation created thereby to *maintain*, but only to *construct*, a system of water works, from the point to the point, and in the manner, and of the material therein set forth. (Aguado Rec. pp. 16-18; Fol. 30-34.)

(b) It will be observed that the trust was not solely for the construction of a system of water supply. It is provided (Aguado record, p. 18, fol. 34) that the excess of 6,000 pesos over the 24,000 to be used in the construction and completion of the water system (making a total of 30,000 pesos), should be invested, and the income thereof, in case of necessity, should be used for the purchase of rice, when the same was cheap, holding the same in storage, and the sale thereof to the poor at cost price when, through scarcity, the same may have advanced in price.

If the argument contained in the brief of plaintiffs in error, under this point, were carried to its logical conclusion, it would result in the *reductio ad absurdum*, that, for instance, the ninety-four shares of capital stock of the Banco Espanol-Filipino, alleged by plaintiffs in error to be specifically responsive to their demands, that being the only specific, tangible, personal property alleged to constitute a portion of the corpus of the trust, could be used, as to the dividends paid on the same, for the sole purpose of accumulating a store of rice for the sale of the same to the poor of Manila.

(2) In what manner they have been fulfilled.

The records fail to show what amounts of money, or what property, was in the possession of the Ayuntamiento of

Manila, as administering the "Carriedo Water Works," when the city was captured by the American forces, on August 13, 1898; or that the ninety-four shares of the stock of the Banco Espanol-Filipino was a portion of the property in the possession of the administration of the Carriedo Water Works at said time; or that the same was held by the Ayuntamiento of Manila specifically as trustee under the will of Carriedo; or that the same had been purchased with funds which had constituted a portion of said trust. The general statement is made in the record in the case of Aguado (pp. 23-25; fol. 43-46), that the construction of the municipal utility known as the "Carriedo Water Works," was begun by the Ayuntamiento of Manila in the year 1878, and the same completed and opened for business in the year 1886; and that there was used in its construction not only the amount shown to have been accumulated in the Carriedo trust, to wit, the sum of 177,853.44 pesos (Aguado rec., p. 21, fol. 39), but also a considerable additional sum, which the Ayuntamiento, by reason of its poverty, and its inability to "perform with the funds of Carriedo the miracle of the loaves and fishes" (Aguado rec. p. 22, fol. 40), was unable to furnish from its ordinary budget, and which was provided by a special tax on meats sold within the Ayuntamiento of Manila, and the revenues arising therefrom were appropriated and used in the construction of the water supply, which, as has been stated, was opened for service in the year 1886.

It is manifestly impossible, from any facts shown in the record, to definitely ascertain whether or not the whole accumulation under the Carriedo trust was expended in the construction of the water works, or what proportion of the total expenditure it constituted, or how much money was produced and used from revenues derived from the special meat tax, or whether the ninety-four shares of stock in the Banco Espanol-Filipino constituted a portion of the Carriedo accumulation, or was purchased from funds derived from

the meat tax, or, in short, from what source were derived the sums of money which were captured in the municipal treasury at Manila by the forces of the United States on August 13, 1898. Nor is such inquiry necessary or useful. The funds were captured by superior force, in war, and when captured became the property of the new sovereignty, which made, by the payment of \$20,000,000, under the Treaty of Paris, full compensatory payment therefor.

It is respectfully submitted that under these facts, and with the apparent impossibility of separating the moneys or property captured into classes referable to their sources, the effort here to impose a specific responsive liability to the claims of plaintiffs in error upon the shares of bank stock, must fail for lack of definite facts.

The recitation of the noble endeavors of the Carriedo trustees to preserve the fruits of that benefaction from the greedy and arbitrary attacks of superior officials are of historical interest, and excite our admiration for the success with which they were crowned; but it is respectfully submitted that that fact fails to satisfy an endeavor, earnest and industrious, to discover from the records what portions of the funds of the trust were in existence at the time of the American occupation, or in what shape they existed.

It is not controverted that a municipal corporation may accept a trust of benevolence, and the cases cited in the able brief of counsel for plaintiffs in error in that regard will be passed without comment. It may be observed, however, that the *Girard trust* (2 How. 127; 7 Wall. 1) was a *continuing trust*, which exists as a beneficent foundation to this day, and from its able and honest administration extends its benefactions from year to year. Similarly the devise in the *McDonogh case* (15 How. 367) was a *continuing trust* for the education of the poor in the cities of New Orleans and Baltimore. It was rightly upheld, and, so far as is shown, its beneficence is still being enjoyed by the objects of that trust.

Here, however, the object of the trust was its increment until a certain, stated sum was reached, and the application of a portion of that sum to the *construction* of a system of water works, in which construction the total amount of the increment and principal mentioned was to be applied. That portion of the trust under the Carriedo will was completed and concluded upon the opening of the works for the supply of water to the Ayuntamiento of Manila, in the year 1886. That object of the trust having been performed in accordance with the terms thereof, the trust is concluded, in the absence of facts definitely showing the contrary.

The statement is made in the brief of plaintiffs in error (p. 60):

"The transactions out of which the Aguado case arises were had with the City of Manila, with express reference to the Carriedo water works. The coal was supplied *for the use and service of the Carriedo trust* and the deposit made to guarantee the complete performance of the contract."

An examination of the record, discloses the fact to be (Aguado rec., p. 2; agreed statements of fact, 2-8) that the contract and deposit in the Aguado case were with the Ayuntamiento of Manila "as trustee and administrator of the Carriedo water works," such statement being probably made through inadvertence, as the contract, as actually signed, was executed by the authorized officials of the Ayuntamiento of Manila, as such, with no mention of other representative capacity either in the body of the instruments, or following their signatures.

Even an admission of the fact that the Ayuntamiento of Manila actually continued to act as trustee under the will of Carriedo could not fix a liability upon said Ayuntamiento; if the facts submitted to the Court, and upon which the claim was based, showed that under the terms of the trust

the same had been completed, and that, its object having been fulfilled, the trust was at an end. That would be a judicial construction and determination of a written instrument under the law. Similarly, if the contract did not so recite.

The admission, however, *supra*, whatever may have been its effect in law as against the Ayuntamiento of Manila, fails as imposing a liability upon the City of Manila, as at present constituted; for the reason that said City of Manila did not succeed the Ayuntamiento as trustee under the Carriedo will, and for the further reason that the trust thereby created was terminated by completion prior to American occupation.

CONCLUSION.

IT IS THEREFORE RESPECTFULLY URGED THAT THE CONTENTIONS OF PLAINTIFFS IN ERROR, IN THE THREE CASES NOW ON HEARING, SHOULD BE BY THIS COURT DISMISSED, FOR THE REASONS HEREIN GIVEN; AND THAT THE JUDGMENTS OF THE SUPREME COURT OF THE PHILIPPINE ISLANDS, IN EACH OF SAID CASES, SHOULD BE AFFIRMED.

Respectfully submitted this 21st day of January, 1911.

PAUL CHARLTON,

*Counsel for the City of Manila, Defendant
and Appellee.*

ISAAC ADAMS,

*City Attorney of Manila,
Of Counsel.*

APPENDIX I.

[General Orders, No. 4.]

HEADQUARTERS DEPARTMENT OF THE PACIFIC AND
EIGHTH ARMY CORPS.

MANILA, P. I., August 15, 1898.

I. In addition to his duties as Division Commander, Brigadier General T. M. Anderson, U. S. Volunteers, is hereby assigned to the command of the District of Cavite, and will remove his headquarters to that point. The garrison of the District of Cavite will be augmented upon the arrival of the next transports containing troops for this command.

II. In addition to his duties as Brigade Commander, Brigadier General Arthur MacArthur, U. S. Volunteers, is hereby appointed Military Commandant of the walled City of Manila, and Provost Marshal General of the City of Manila, including all the outlying districts within the municipal jurisdiction. General MacArthur will remove his headquarters within the walled city, and will bring with him one strong regiment of his command to take station within the walled town. The commanding officer of the 2d Oregon Volunteer Infantry, now stationed in the walled city, will report to General MacArthur, and the companies of the 2d Oregon Volunteer Infantry, now at Cavite, will, upon being relieved by other troops, be sent to Manila to join the regiment. General MacArthur will relieve the Civil Governor of his functions, and take possession of the offices, clerks, and all machinery of administration of that office, retaining and employing the present subordinate officers of civil administration until, in his judgment, it is desirable to replace them by other appointments.

III. Colonel James S. Smith, 1st California Volunteer Infantry, in addition to his duties as regimental commander, is appointed Deputy Provost Marshal for the district of the city north of the Pasig River, and will report to General MacArthur. Colonel S. Ovenshine, 23d U. S. Infantry, is

appointed Deputy Provost Marshal for the districts of the city, including Ermita and Malate, outside of the walled town and south of the Pasig River, and will report to General MacArthur.

IV. Under paragraphs 3 and 4 of the terms of capitulation, full lists of public property and stores, and returns in duplicate of the men by organizations, are to be rendered to the United States within ten days, and public horses and public property of all kinds are to be turned over to the staff officers of the United States, designated to receive them. Under these paragraphs the Chief of Artillery at these headquarters, and the Chiefs of the Staff Departments, will take possession of the public property turned over as above, pertaining to their respective departments.

The returns of the prisoners will be submitted to the Military Commandant of the city, who will assign the men for quarters in such public buildings and barracks as are not required for the use of United States troops. The horses and private property of the officers of the Spanish forces are not to be disturbed. The Chief Paymaster at these headquarters will turn over such portion of the Spanish public funds received by him, by virtue of this order, to the Military Commandant above designated, as may be necessary for the administration of his office.

V. All removals and appointments of subordinate officers of civil administration, and transfers of funds authorized by this order, must receive the approval of the Commanding General before action is taken.

VI. The Chief Quartermaster and Chief Commissary of Subsistence at these headquarters, will establish depots or supply in Manila, with as little delay as possible.

Quartermaster and subsistence depots will also be retained at Cavite.

By command of Major General Merritt:

J. B. BABCOCK,
Adjutant General.

APPENDIX II.

[No. 183.]

AN ACT to incorporate the City of Manila.

By authority of the President of the United States, be it enacted by the United States Philippine Commission, that:

SECTION 1. (a) *Inhabitants of Manila constitute a municipality.*—The inhabitants of the City of Manila, residing within the territory described in Section 2 of this act, are hereby constituted a municipality, which shall be known as the City of Manila, and by that name shall have perpetual succession, and shall possess all the rights of property herein granted or heretofore enjoyed and possessed by the City of Manila as organized under Spanish sovereignty.

(b) *City of Manila to have a seal; to dispose of real and personal property, etc.*—It may have a common seal, and alter the same at pleasure, and may take, purchase, receive, hold, lease, convey, and dispose of real and personal property for the general interests of the city, contract and be contracted with, sue and be sued, and prosecute and defend to final judgment and execution, and execute all the powers hereinafter conferred.

SEC. 2. *Temporary boundaries of city prescribed.*—The temporary boundaries and limits of said city are hereby established and prescribed in general, as follows:

Beginning at a point at the junction of Estero Vitas with Manila Bay at low-water mark, in the northwest corner of Manila, thence running S. 63° E. up Bocana Vitas to its junction with Estero Gagalangin, 226.00 meters; thence N. 30° E. on Gagalangin Estero, 362.50 meters; thence S. 80° E. to the center of the main road to Caloocan at its junction with Calle Solis, 679.00 meters; thence S. 76° E. in center of Calle Solis, 85.00 meters; thence N. 82° 15' E., 50.00 meters; thence N. 75° 10' E. to junction with Manila and Dagupan Railroad, 147.50 meters; thence S. 79° E. in center of Calle Solis, 68.00 meters; thence N. 79° E., 100.00 meters; thence N. 70° 15' E. 252.50 meters; thence N. 79°

50' E. to junction of Calle Solis with Calle Lico, 186.00 meters; thence S. 71° 30' E. crossing Paangbundoc palay fields to a point at the junction of Calle Sangleyes and Calle Loma, 726.00 meters; thence N. 56° E. in center of Calle Sangleyes to a point in front of the Chinese Hospital, 170.00 meters; thence N. 63° 50' E. across fields to center of Blockhouse No. 4, 445.00 meters; thence S. 22° E. to center of Blockhouse No. 5, 184.00 meters; thence S. 22° E. to center of Blockhouse No. 6, 540.20 meters; thence S. 43° 15' E. to center of Blockhouse No. 8, 753.00 meters; thence S. 80° 10' E. to center of Blockhouse No. 9, 704.20 meters; thence S. 53° E. to center of Blockhouse No. 10 (or Baligbaligy), 907.50 meters; thence S. 58° E. to center of Blockhouse No. 11, 457.00 meters; thence S. 38° 15' E. to center of San Juan Bridge, 757.00 meters; thence S. 55° 30' E. down middle of San Juan River, 479.00 meters; thence S. 26° 10' E. 552.00 meters; thence S. 3° 40' W., 185.00 meters; thence S. 48° 15' W., 505.00 meters; thence S. 63° 30' W., 316.00 meters; thence S. 83° W., 382.00 meters; thence N. 64° 10' W., 151.00 meters; thence N. 29° 50' W. to a point in the middle of the Pasig River, 135.00 meters; thence S. 67° 10' W. on the Pasig River, 137.50 meters; thence up the center of Estero Biata to a point at its junction with Estero Pesafrancia and Estero Lasdamas; thence continuing up the middle of Estero Lasdamas to a point at its junction with Estero Paco; thence on Estero Paco to Calle Lingeros and Estero Tripa de Gallina; thence in the middle of Estero de Gallina to a point on the Singalon Bridge on the road from Pineda to San Pedro Macati; thence S. 76° W. to the middle of Calle Lico, 40.00 meters; thence S. 47° 30' W., in the middle of Calle Lico to its junction with Camino Singalon, 39.00 meters; thence S. 63° 40' W. to Calle Real de Pineda, 119.00 meters; thence S. 63° 50' W. in the middle of the road from Singalon to Maytubig or Malate, 185.00 meters; thence S. 26° 30' W., 159.00 meters; thence S. 81° 50' W., 152.50 meters; thence S. 69° 50' W., 23.00 meters; thence S. 77° 30' W., 170.00 meters; thence S. 68° 40' W. to the junction of Calle San Lucas, 167.50 meters; thence S. 22° 50' E. in the middle of Calle San Lucas, 224.00 meters; thence across fields S. 68° 30' W. to a point in the middle of Calle Marina, about

206.00 meters, to low-water mark in Manila Bay; thence following the shore line of said bay at low-water mark in a general northwesterly direction to the point of beginning.

On or before the 31st day of December, 1901, the Municipal Board hereinafter provided for shall make careful investigation and fix what, in its opinion, are proper boundaries for the City of Manila, and make report of its investigations to the Commission for further legislation. For this purpose it shall cause surveys to be made of the proposed new boundaries and may include within such proposed boundaries territory not now or heretofore included in the City of Manila.

SEC. 3. *Jurisdiction of city government for police purposes.*—The jurisdiction of the city government for police purposes only shall extend to three miles from the shore into Manila Bay and over a zone surrounding the city on land of five miles in width.

SEC. 4. *Government of city vested in Municipal Board.*—The government of said city is hereby vested in a Municipal Board, consisting of three members, to be appointed by the Civil Governor, by and with the consent of the Commission, and to be removable in the same manner. One member of the Board shall be designated in the appointment as President, and shall preside at all meetings of the Board. He shall sign all ordinances, resolutions, bonds, contracts, and obligations made or authorized by the Board, and shall issue such orders and instructions as may be necessary to carry out and enforce the ordinances of the city, and the orders of the Board relating thereto. In case of sickness or prolonged absence of any member of the Board, or if for any reason it becomes necessary to maintain a quorum or to break a tie, the Civil Governor may make temporary appointment until the return of such absent member or members. The person so appointed shall possess all the rights and perform all the duties of a member of the Board.

SEC. 5. *Duties of Secretary of Board.*—The Board shall have a secretary, who shall be first appointed by the Civil Governor, by and with the consent of the Commission, and his successor shall be appointed by the Board, subject to the provisions of the Civil Service Act. The Secretary shall be in charge of the municipal records. He shall keep a full

record of the proceedings of the Board, both legislative and executive, and file all documents relating thereto; shall record, in a book kept for that purpose, all ordinances passed by the Board, with the dates of passage and publication of the same; shall keep the corporate seal, and affix the same, with his signature, to all ordinances and other official acts of the Board, and shall present the same for signature to the President; shall cause each ordinance passed to be published as herein provided; shall have charge and custody of all records and documents of the city and of any office or department thereof, for which provision is not otherwise made; shall, on demand, furnish certified copies of all city records and documents, and shall collect and receive therefor such fees as may be prescribed, for the use of the city; shall keep his office and all records therein open to inspection during usual business hours by all residents of the city and all officers of the Insular and general governments. He shall have such other powers and perform such other duties as the Board may prescribe.

SEC. 6. *Duties of Disbursing Officer of Board.*—The Board shall appoint a disbursing officer, who shall be charged with the duty of disbursing all moneys drawn from the Insular Treasury pursuant to appropriations made by the Commission. He shall discharge his duties in accordance with the provisions of Act No. 145, prescribing the duties of disbursing clerks, and shall render his accounts in such manner as the Auditor for the Philippine Archipelago may prescribe.

SEC. 7. *Oath to be taken by each member of Board, and city officer.*—Each member of the Board, and city officer appointed under this act shall, before entering on the duties thereof, take and subscribe to the following oath, which shall be filed with the Secretary to the Board, and be by him recorded:

I,, having been duly appointed
 of the City of Manila, do hereby accept said office, and do solemnly swear (or affirm) that I recognize and accept the supreme authority of the United States of America in these Islands, and will maintain true faith and allegiance thereto; that I will obey all the laws, legal orders, and decrees promulgated by its duly constituted

authorities; that I impose upon myself this obligation voluntarily, without mental reservation or purpose of evasion; that I will well and faithfully discharge the duties of the office upon which I am about to enter, so help me God. (Last four words to be stricken out in case of affirmation.)

.....
(Signature of officer.)

Subscribed and sworn to (or affirmed) before me this
..... day of, 19.....

.....
(Signature of officer administering oath.)

This oath, and all others required in connection with the administration of the city government, may be administered by any officer authorized to administer oaths, or by any member of the Board or its secretary, or by any other city officer appointed under this act, and no fee shall be charged therefor.

SEC. 8. *Each member of Board to execute bond.*—Each member of the Board, before entering upon the duties of his office, shall execute a bond to the Insular Government in the sum of ten thousand dollars, and with such surety or sureties as shall be approved by the Treasurer of the Philippine Archipelago. The bond shall be filed with the Treasurer, and a copy spread upon the records of the Board. Every city officer charged with the custody of property or funds, before entering upon the duties of his office, shall execute a bond to the city, in such sum and with such surety or sureties as shall be approved by the members of the Board in writing thereon. The bond shall be filed with the Treasurer, and a copy spread upon the records of the Board. Should suit be brought upon any of said bonds, it shall be no defense to those signing the bond that the above requirements for approval have not been complied with, if, in fact, by virtue of such bond, such officer has entered upon his official duties.

SEC. 9. *Beginning of fiscal year.*—The fiscal year of the city shall commence on the first day of July of each calendar year, and extend to and include the thirtieth day of June following.

SEC. 10. *Method of transacting business by Board.*—The Board shall meet and transact business every day during the year, Sundays and legal holidays excepted. It shall sit with

open doors unless otherwise ordered by affirmative vote of two members. It shall keep a record of its proceedings, and determine its rules of procedure not herein set forth. Two members of the Board shall constitute a quorum for the transaction of business, and two affirmative votes shall be necessary to the passage of any ordinance or motion. The ayes and noes shall be taken and recorded upon the passage of all ordinances, upon all propositions directing payment of money or creating liability, and at the request of any member, upon any other proposition. Each ordinance shall be sealed with the city seal, signed by the President of the Board and the Secretary, and recorded in a book kept for that purpose. Each ordinance shall be published in two daily papers of Manila, one printed in English and the other in Spanish, within three days after its passage, and shall take effect and be in force on and after the tenth day following its passage, if no date is fixed in the ordinance.

SEC. 11. *Board to have certain legislative and executive authority.*—The Board shall have the legislative authority herein conferred. It shall possess the executive powers herein conferred, which shall be exercised through the following departments, and by general supervisory control over the same:

1. Department of Engineering and Public Works.
2. Police Department.
3. Law Department.
4. Department of Fires and Building Inspection.
5. Department of Assessments and Collections.

SEC. 12. *Appointment of city officers and employes, etc.*—The heads of departments, assistant heads, and all superintendents therein shall, upon the passage of this act, be appointed by the Civil Governor, by and with the consent of the Commission, and shall be subject to removal by the Board. Vacancies in such offices thereafter shall be filled by appointment of the Board in accordance with the provisions of the Civil Service Act. Employes other than officers shall be appointed and removed by the heads of departments in accordance with the provisions of the Civil Service Act.

SEC. 13. *Board to inspect official books, papers, etc.*—The Board shall have power at all times to examine and inspect official books, papers, and records of all officers, agents

and employes, and shall examine and inspect the same at least once in each year.

SEC. 14. *Board to submit annually certain information to Civil Governor; to prepare annual report.*—On or before the tenth day of June of each year, the Board shall prepare and present to the Civil Governor for transmission to the Commission, in itemized form and in detail: (a) an inventory of lands, buildings, and other property, real and personal, belonging to the city, including cash in the treasury; (b) a statement of the liabilities of the city; (c) an estimate of the revenues of the city from all sources for the ensuing fiscal year, with a statement opposite each item of the amount realized from such sources during the preceding twelve months; (d) an estimate of the ordinary expenses for the ensuing fiscal year, with a statement opposite each item of the corresponding expenses during the preceding twelve months; (e) an estimate of such extraordinary expenditures as may be necessary for any purpose, the approximate total expenditure recommended, and the amount which it is expected to expend during the ensuing fiscal year; also an itemized statement of the extraordinary expenditures during the preceding twelve months. The Board shall, on or before the first day of August of each year, prepare and present to the Civil Governor for transmission to the Commission an annual report covering the operations of the city government during the preceding fiscal year. This report shall be printed in pamphlet form by the Board for general circulation.

SEC. 15. *Appropriations for city of Manila.*—The Commission shall upon estimates submitted by the Board, make all appropriations for the expenses of the City of Manila. Thirty per cent. of the appropriations for said purpose shall be paid out of any moneys in the Insular Treasury not otherwise appropriated, and seventy per cent. shall be paid out of the revenues of the City of Manila. In part consideration of the contribution of thirty per cent. of the city expenses from the Insular Treasury, it shall be lawful for the Insular Government to appropriate to its use temporarily the building known as the Ayuntamiento, now occupied by the offices of the Insular Government.

SEC. 16. *General powers and duties of Board.*—The

Board shall take possession of all lands, buildings, offices, books, papers, records, moneys, credits, securities, assets, accounts, or other property or rights belonging to the former City of Manila or pertaining to the business or interests thereof, and, subject to the provisions herein set forth, shall have control of all its property except the building known as the Ayuntamiento, provision for the occupation and control of which is made in Section 15 of this act; shall collect taxes and other revenues, and apply the same in accordance with appropriations, as hereinbefore provided, to the payment of the municipal expenses; shall supervise and control the discharge of official duties by subordinates; shall institute judicial proceedings to recover property and funds of the city wherever found or otherwise to protect the interests of the city, and shall defend all suits against the city; shall make such ordinances and regulations as may be necessary to carry into effect and discharge the the powers and duties conferred by this act, and to provide for the peace, order, safety, and general welfare of the city and its inhabitants; shall fix penalties for the violation of ordinances, provided that no fine shall exceed one hundred dollars, and no imprisonment shall exceed six months for a single offense. The Board shall see that the laws and ordinances are faithfully executed and enforced, and shall have such further powers and perform such further duties as may be prescribed by law.

SEC. 17. *General powers of Board stated in detail.*—In addition to the foregoing the Board shall have the following general powers:

(a) To collect taxes for general and special purposes, in accordance with law.

(b) To prescribe the time, place, and manner of payment of salaries and wages to city officials and employees.

(c) To provide for the erection or rental and care of buildings necessary for the use of the city.

(d) To establish and maintain free public schools for primary instruction and to provide school-houses therefor, subject to the limitations of Act No. 74.

(e) To provide secondary schools, and professional schools, with the approval of the City Superintendent, and

to charge matriculation and tuition fees with the same approval.

(f) To maintain police courts established by law, which shall have exclusive jurisdiction of all criminal cases under the ordinances of the city, and such further jurisdiction as may be herein or hereafter conferred.

(g) To release any person imprisoned for violation of a city ordinance and to remit the sentence of such person, or any part thereof.

(h) To establish fire limits, and regulate the kinds of buildings and structures that may be erected within said limits, and the manner of constructing and repairing the same.

(i) To erect engine houses, and provide fire engines, hose carts, hooks and ladders, and other equipment for the prevention and extinguishment of fires, and to provide for the management and use of the same.

(j) To issue licenses, fixing the amount of the license fee and prescribing the time and manner of issuing or revoking the same, and to make regulations for the following:

(k) Hawkers, peddlers, hucksters, pawn-brokers, dealers in second-hand merchandise, junk-dealers, auctioneers, plumbers, brewers, distillers, money-changers and brokers, hotels, restaurants, cafes, lodging houses, public vehicles, public ferries, livery stables, billiard tables, theaters, theatrical performances, race tracks, horse races, circuses, and all other forms and places of amusement; the keeping, preparation and sale of meat, poultry, fish, butter, cheese, lard, vegetables, bread and other provisions.

(l) To regulate the business and fix the location of tanneries, renderies, tallow chandleries, bone-factories, soap-factories, match-factories, blacksmith shops, foundries, steam boilers, lumber yards, ship yards and other dangerous, offensive or unwholesome establishments; the storage and sale of gunpowder, tar, pitch, resin, coal-oil, benzine, turpentine, hemp, cotton, nitro-glycerin, petroleum, or any of the products thereof and all other highly combustible or explosive materials.

(m) To inspect and regulate the method of using steam engines and boilers, other than marine, and to charge a rea-

sonable inspection fee for so doing, and to license all engineers engaged in operating the same.

(*n*) To suppress houses of ill fame and other disorderly houses, gaming houses, gambling, and all fraudulent devices for the purpose of gain and of obtaining money or property; to prohibit the printing, sale or exhibition of immoral pictures, books or publications of any description.

(*o*) To regulate and license or suppress cock-fighting and cock-pits.

(*p*) To license, regulate or prohibit the keeping of dogs, and to authorize their impounding and destruction when running at large contrary to ordinance.

(*g*) To establish and maintain city pounds; to regulate, restrain, and prohibit the running at large of domestic animals, and provide for the distraining, impounding, and sale of the same for the penalty incurred and the cost of the proceedings; also to impose penalties upon the owners of said animals for the violation of any ordinance in relation thereto.

(*r*) To prohibit and provide for the punishment of cruelty to animals.

(*s*) To provide for the inspection and sealing of weights and measures, enforce the keeping and use of proper weights and measures by vendors, and regulate the inspection, weighing and measuring of brick, coal, lumber and other articles of merchandise.

(*t*) To lay out, construct, improve, and regulate the use of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries and other public places; to prevent and remove encroachments and obstructions from the same; to provide for the lighting, cleaning, and sprinkling of streets and public places; to regulate or prevent the use of the same for processions, signs, sign posts, awnings, awning posts; the carrying or displaying of banners, placards, advertisements or hand bills, or the flying of signs, flags or banners, across, over, or from any building along the same. To prohibit the throwing or depositing of offal, garbage, refuse, or other offensive matter in the same, and to provide for its collection and disposition; to regulate the openings therein for the laying of gas, water, sewer, and other pipes therein, the building and repair of tunnels, sewers, and drains, and all structures therein and thereunder, and the erecting of poles

and the stringing of wires therein; to provide for and regulate cross-walks, curbs, and gutters therein; to name and change the names of the same, and provide for and regulate the numbering of houses and lots fronting thereon; to regulate traffic and sales upon the same; to abate nuisances in the same, and punish the authors or owners thereof; to construct, maintain and regulate the use of bridges, viaducts and culverts; to prevent and regulate playing ball, flying kites, and rolling hoops, and any other amusements having a tendency to annoy persons using the streets or public places, or to frighten horses or other animals; to regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the city; to regulate the locating, constructing and laying of the track of any horse, electric or other form of railroad in the streets or other public places of the city authorized by law; to provide for and change the location, grade, and crossings of any railroad, and to compel such railroad to raise or lower its tracks to conform to such provisions or changes; to require any railroad company to fence its railroad, or any part thereof, to provide suitable protection against injury to persons or property, and to construct and repair ditches, drains, sewers, and culverts along and under its tracks, so that the natural drainage of the streets and adjacent property shall not be obstructed.

(u) To construct, maintain, and regulate the use of canals and water courses, and provide for the cleansing and purifying of the same, and the draining and filling of private premises to prevent or abate nuisances.

(v) To construct and maintain public landing-places, wharves, piers, docks, levees, and to regulate and control the use of the same, and all private landing-places, wharves, piers, docks and levees.

(w) To maintain water works for the purpose of supplying water to the inhabitants of the city, to purify the source of supply, and regulate the control and use of the water, and to fix and collect rents therefor; to regulate the construction, repair and use of hydrants, pumps, cisterns and reservoirs, and to prevent the waste of water.

(x) To establish, maintain, and regulate the use of public drains, sewers, latrines, and cess-pools, and regulate the construction and use of private drains, sewers, latrines, and cess-pools.

(y) To provide for the establishment of public stables and bath-houses, and to inspect and regulate the same.

(z) To establish public markets, market-houses, and slaughter-houses, and provide for the regulation, inspection, and use thereof, and to regulate or prohibit the establishment of such institutions by any person, firm or corporation.

(aa) To make suitable provisions to insure the public safety from conflagrations, and the effects of floods, storms, and other public calamities, and to provide relief for persons suffering from the same.

(bb) To establish, maintain and regulate a police force, prescribe the powers and duties of its members, and make and enforce all necessary police ordinances, with the view to the confinement and reformation of vagrants, disorderly persons, mendicants, and prostitutes, and persons convicted of violating any city ordinance; to provide for the arrest, trial, fining, and putting to work on the streets and elsewhere, of such persons.

(cc) To extend and enforce all its ordinances over all waters within the city, and over the Bay of Manila three miles beyond the city limits, and over any boat or other floating structure thereon; and for the purpose of protecting and insuring the purity of the water supply of the city, to extend and enforce ordinances to that end over all territory within the drainage area of such water supply, or within 100 meters of any reservoir, conduit, canal, aqueduct or pumping station used in connection with the city water service.

(dd) To enforce the regulations of the Insular Board of Health and to impose fines and penalties against persons who violate such regulations.

(ee) To fix rates and collect wharfage from all water craft landing at or using public wharves, docks, levees, or landing places.

(ff) To provide for the closing of opium joints, and to prohibit the keeping or visiting of any place where opium is smoked or sold for the purpose of smoking.

(gg) To regulate the use of lights in stables, shops, and other buildings and places, and to regulate and restrain the building of bonfires and the use of firecrackers, fireworks, torpedoes, candles, sky-rockets, and other pyrotechnic displays.

(hh) To prevent and suppress riots, affrays, disturbances, and disorderly assemblies; to punish and prevent intoxication, fighting, quarreling, and all disorderly conduct; and to keep the peace.

(ii) To make, publish, amend, and repeal all ordinances, necessary to carry into effect the powers herein granted, and to enforce the same by fines and penalties, within the limits authorized by law.

SEC. 18. *Insular Auditor to audit accounts of city.*—The Auditor for the Philippine Archipelago shall receive and audit all accounts of the city of Manila, in accordance with the provisions of Act No. 90.

SEC. 19. *Insular Treasurer to receive and keep moneys of city.*—The Treasurer of the Philippine Archipelago shall receive and safely keep all moneys arising from the revenues of the City of Manila, in accordance with the provisions of Act No. 90, and shall expend the same upon warrants drawn in accordance with the provisions of said act. Requisitions for such warrants, in favor of the disbursing officer of the Board shall be made by the head of the department of the city government to which the business relates, subject to the approval of the Civil Governor.

SEC. 20. *Insular Purchasing Agent to make purchases for city.*—The Insular Purchasing Agent shall purchase all supplies, equipments, material, and property of every kind, except real estate, for the use of the City of Manila on any of the departments or offices thereof, and shall supply the same to the city or any of its departments or offices, in accordance with the provisions of Act No. 146.

SEC. 21. *Health of city.*—The health of the city shall be under the control of the Insular Board of Health, which Board shall exercise in the City of Manila the powers conferred by Act No. 157. If conflict of opinion and jurisdiction shall arise between the Municipal Board and the Insular Board of Health, the issue shall be referred to the Civil Governor for his decision, which shall be final.

SEC. 22. *Warden of Bilibid Prison to receive city prisoners.*—The Warden of Bilibid Prison shall set apart a suitable portion thereof for city prisoners, and shall receive for confinement and detention all persons who have been sentenced to imprisonment by the municipal courts of the

City of Manila : and the expense of maintaining such portion of the Bilibid Prison shall be paid for out of the funds of the city.

SEC. 23. *Establishment of schools in city.*—The Board shall have the same powers in respect to the establishment of schools in Manila as are conferred on municipal councils by the provisions of the Municipal Code and its amendments, as limited by Act No. 74, establishing a department of public instruction. A local school board of six members for the City of Manila, who shall serve without salary, shall be elected and removed in accordance with Sections 10 and 11 of said Act No. 74, and shall exercise the same powers as provided in said act. The General Superintendent of Public Instruction shall exercise the same jurisdiction and powers in the City of Manila as elsewhere in the archipelago, and the City Superintendent of Schools in Manila shall have all the powers and duties in respect to the schools of such city as are vested in division superintendents in respect to the schools of their divisions.

SEC. 24. *Reports to be made on condition of schools and school buildings.*—The City Superintendent of Schools shall make a quarterly report of the condition of the schools and school buildings of Manila to the Board, and such recommendations as seem to him wise in respect to the number of teachers, their salaries, new buildings to be erected and all other similar matters, together with the amount of city revenues which should be expended in paying native teachers, and improving the schools or school buildings of the city. The local school board shall make a similar quarterly report to the Board. The local school board shall be furnished an office and necessary clerical force by the City Superintendent out of the appropriation for his office. All construction or repairs of school houses ordered by the Municipal Board, subject to the limitations of Act No. 74, shall be carried on under the Department of Engineering and Public Works, and the care and custody of school buildings shall be under the Superintendent of Buildings and Illumination.

SEC. 25. *Powers and duties of heads of departments.*—Each head of department of the city government shall be in control of such department, under the direction and supervision of the Board, and shall possess such powers as may be

prescribed herein or by ordinance. He shall make requisition in duplicate for all funds required for the use of his department during the ensuing month. All warrants drawn in accordance with such requisitions shall be in favor of the disbursing officer of the Board, and shall be disbursed pursuant to appropriations. The correctness of all payrolls and vouchers covering the payment of money shall be certified to by each head of department before payment, except as herein otherwise expressly provided. Each head of department shall deposit with the Treasurer of the Philippine Archipelago all moneys collected within his department, taking, as required by Rules 51 and 52 of Act No. 90, receipts for all moneys so deposited. He shall submit to the Auditor for the Philippine Archipelago on the first day of each month an abstract showing all collections made within his department during the preceding month, supported by proper vouchers covering such receipts. He shall, ten days before the beginning of each quarter, prepare and submit to the Board, through the Auditor for the Philippine Archipelago, the following estimates: (a) An itemized estimate of the revenues of the department from all sources for the ensuing quarter, with a statement opposite each item of the amount realized from such source during the preceding quarter; (b) an itemized estimate of the ordinary expenses of the department for the ensuing quarter, with a statement opposite each item of the corresponding expenses during the preceding quarter; (c) an itemized estimate of such extraordinary expenditures as may be deemed necessary for any purpose, with an itemized statement of extraordinary expenditures during the preceding quarter. Such estimates shall contain a statement of the approximate total expenditure recommended, and the amount which it is expected to expend during the ensuing quarter. He shall, on or before the tenth day of July of each year, prepare and present to the Board an annual report, in duplicate, covering the operations of his office during the preceding fiscal year.

SEC. 26. *City officers to devote time to business.*—Each officer shall devote his time and attention exclusively during the usual business hours to the duties of his office, and shall not hold more than one office unless expressly authorized by law.

This section shall not apply to members of the Advisory Board or to members of the local school board, or to other persons discharging public duties under the city government who receive no compensation for their services.

SEC. 27. *Persons who are eligible for appointment to city offices.*—No person shall be eligible for appointment to any city office who is not either (a) citizen of the United States, or (b) a native of the Philippine Islands, or (c) a person who has, under and by virtue of the Treaty of Paris, acquired the political rights of a native of the Islands.

SEC. 28. *City officers not to engage in certain business transactions.*—It shall be unlawful for any city officer, directly or indirectly, individually or as a member of a firm, to engage in any business transaction with the city through any of its authorized officials, boards, agents, or attorneys, whereby money is to be paid, directly or indirectly, out of the revenues of the city to such person or firm; or to purchase any real estate or other property belonging to the city, or which shall be sold for taxes or assessments, or by virtue of legal process at the suit of the city; or to be surety for any person having a contract or doing business with the city, for the performance of which security may be required; or to be surety on the official bond of any officer of the city.

SEC. 29. *Action in case of separation from service of city officers.*—Every city officer shall, at the expiration of his term, or upon resignation, deliver to his successor in office, who shall receipt for the same in duplicate, all property, books, and effects of every description in his possession, belonging to the city or pertaining to his office. One copy of the receipt shall be delivered to the retiring officer and the other copy filed with the Auditor for the Philippine Archipelago. All funds, whether collections or moneys appropriated for disbursement, shall be deposited in the Insular Treasury. Funds for disbursement shall be deposited as repayments to the respective appropriations to which they pertain and be available for withdrawal by warrant in favor of the successor. In case of the death or removal of any city officer, the Board shall at once take charge of the office, books, papers, property, and funds of the late incumbent, and forthwith notify the sureties on his official bond. Such sureties shall cause to be rendered to the Auditor the ac-

counts current of the deceased or removed officer, and deposit or cause to be deposited as aforesaid the moneys with which such officer was chargeable.

SEC. 30. *When Board must advertise for sealed bids or proposals.*—Before entering upon any work or public improvement the total expense whereof shall exceed the sum of five hundred dollars, the Board shall advertise for sealed bids or proposals for the same in two daily newspapers published in Manila, one printed in English and the other in Spanish, for a period of one week, the first insertion to be not less than ten days before the day fixed for opening such proposals. A plan or profile of the work to be done, accompanied by specifications for the performance of the same, shall, before advertisement, be placed on file in the office of the Board, or the department of the city government having charge of the work, which plan, profile, and specification shall, at all proper times, be open for public inspection. All bids shall be opened in the presence of the Board at the advertised time and place. Each bid shall be accompanied by a deposit, the amount and character of which shall be fixed by the Board and named in the advertisement, and which shall not exceed ten per cent. of the estimated cost of the improvement or work to be done where the estimated cost exceeds one thousand dollars nor be less than one hundred dollars in any case. Such deposit shall be forfeited to the city if the bidder shall neglect or refuse to enter into a contract, with approved sureties, to execute the work for the price mentioned in his bid and according to the plans and specifications, in case the contract shall be awarded to him. Should all bids be rejected, or should it become necessary for any reason to call for new bids, subsequent advertisement shall be for a period of five days before the proposals are opened, and in the manner above prescribed.

SEC. 31. *Contracts in excess of \$500.*—Every contract exceeding in amount the sum of five hundred dollars for work, materials or supplies, shall be let by the Board to the lowest responsible bidder, provided that the Board may, in its discretion, reject any and all bids, and if such bids are too high may purchase the material, hire the laborers, and supervise the work. Bonds, to be approved by the Board, shall be taken for the faithful performance of contracts; all

such contracts shall be executed in triplicate by the Board and by the contractor; one original copy so executed shall be kept and filed in the office of the Board, one shall be filed in the office of the Auditor for the Philippine Archipelago, and the third shall be given to the contractor. Every contract for a sum greater than five hundred dollars shall be signed by the president of the Board and the Secretary under the corporate seal.

SEC. 32. *Contracts not in excess of \$500.*—If the consideration for a contract shall not exceed five hundred dollars, the Board may authorize the head of any department, or any city officer, to execute such contract; but no expenditure shall be made for such purpose without the written order of the Board, which order shall be returned and filed as a voucher with the bill upon which payment was made.

DEPARTMENT OF ENGINEERING AND PUBLIC WORKS.

SEC. 33. *Duties of City Engineer.*—There shall be, under the Board, a City Engineer, who shall be in charge of the Department of Engineering and Public Works. He shall have charge of all the surveying and engineering work of the city, and shall perform such services in connection with public improvements, or any work entered upon or projected by the city, or any department thereof, as may require the skill and experience of a civil engineer. He shall ascertain, record, and establish monuments of the city survey and from thence extend the surveys of the city, and locate, establish, and survey all city property, and also private property abutting on the same, whenever directed by the Board; shall prepare and submit plans, maps, specifications, and estimates for buildings, streets, bridges, docks, and other public works, and supervise the construction and repair of the same; shall make such tests and inspection of engineering materials used in construction and repair as may be necessary to protect the city from the use of materials of a poor or dangerous quality; shall inspect and report upon the condition of public property and public works whenever required by the Board; shall have the care and custody of all public buildings, when erected; including markets and slaughter-houses and all buildings rented for city purposes, and of any sys-

tem now or hereafter established for lighting the streets, public places and public buildings of the city; shall inspect and seal weights and measures, enforce the keeping and use of proper weights and measures by vendors and vendees, and regulate the inspection, weighing and measuring of brick, coal, lumber, and other articles of merchandise, in accordance with law and ordinances; shall prevent the encroachment of private buildings and fences on the streets and public places of the city; shall inspect and supervise the construction, repair, removal, and safety of private buildings; shall regulate and enforce the numbering of houses, in accordance with the ordinances of the city; shall have the care of all public streets, parks, and bridges; shall maintain, clean, sprinkle and regulate the use of the same for all purposes as provided by ordinance; shall supervise the collection and disposition of all garbage, refuse, the contents of closets, vaults, and cess-pools, and all other offensive and dangerous substances within the city; shall have the care and custody of all public docks, wharves, piers, levees, and landing-places, when erected; shall have general supervision and inspection of all private docks, wharves, piers, levees, and landing-places, and other property bordering on the harbor, river, esteros, and waterways of the city; and shall issue permits for the construction, repair, and removal of the same, and enforce all ordinances relating to the same; shall have the care and custody of the public system of waterworks and sewers, and all sources of water supply, and shall control, maintain, and regulate the use of the same, in accordance with the ordinances relating thereto, and shall collect water rents as fixed by law or ordinance; shall inspect and regulate, subject to the approval of the Board, the use of all private systems for supplying water to the city and its inhabitants, and all private sewers and their connections with the public sewer system. He shall file and preserve all maps, plans, notes, surveys, and other papers and documents pertaining to his office.

SEC. 34. *Assistants to City Engineer.*—To assist the City Engineer in the discharge of his official duties, there shall be employed under his direction a first assistant city engineer, two second assistant city engineers, a superintendent of streets, parks, bridges, docks, and wharves, a superintendent

of water and sewers, and a superintendent of buildings and illumination.

POLICE DEPARTMENT.

SEC. 35. *Duties of Chief of Police.*—There shall be, under the Board, a Chief of Police, who shall have charge of the Department of Police, and everything pertaining thereto, including the organization, government, discipline, and disposition of the city police and detective force; shall quell riots, disorders, disturbances of the peace, and shall quell and prosecute violators of any law or ordinance; shall exercise police supervision over all land and water within the police jurisdiction of the city; shall be charged with the protection of the rights of persons and property wherever found within the jurisdiction of the city, and shall arrest without warrant, when necessary to prevent the escape of the offender, violators of any law or ordinance, and all who obstruct or interfere with him in the discharge of his duty; shall be responsible for the safe keeping of all prisoners until they shall be released from custody, in accordance with law, or delivered to the warden of the proper prison or penitentiary; may take good and sufficient bail for the appearance before the city court of any person arrested for violation of any city ordinance; shall have authority, within the police limits of the city, to serve and execute criminal processes of any court; shall, either in person or by deputy, attend all sessions of the city courts, and shall promptly and faithfully execute all orders of the Board, and all writs and processes of the city courts and all criminal processes of the Court of the First Instance of the City of Manila, when placed in his hands for that purpose. He shall have such further powers and perform such further duties as may be prescribed by law or ordinance.

SEC. 36. *Duties of Chief of Secret Service.*—The Chief of Police shall have an assistant, to be known as the Chief of the Secret Service, who shall have charge of the detective force, and shall perform such other duties as may be assigned to him by the Chief of Police or be prescribed by ordinance.

SEC. 37. *Powers and duties of peace officers.*—The mem-

bers of the Board, the Chief of Police, the Chief of the Secret Service, and all officers and members of the police force and secret service shall be peace officers; and all peace officers created by this act, or authorized by law or ordinance, are authorized to serve and execute all processes of municipal courts and criminal processes of insular courts to whomsoever directed, within the jurisdictional limits of the city or within the police limits as hereinbefore defined; and within the same territory they may pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace; may arrest or cause to be arrested, without warrant, any offender when the offense is committed in the presence of a peace officer or within his view; and in such pursuit or arrest may enter any building, ship, boat, or vessel, or take into custody any person therein suspected of being concerned in such crime or breach of the peace, and any property suspected of having been stolen. They shall detain such person only until he can be brought before the proper magistrate, and shall have such other powers and perform such other duties as peace officers as may be prescribed by law or ordinance. Whenever the Board shall deem it necessary, to avert danger or to protect life and property, in case of riot, disturbance, or public calamity, or when it has reason to fear any serious violation of law and order, it shall have power to swear in special police, in such numbers as the occasion may demand. Such special police shall have the same powers while on duty as members of the regular force.

LAW DEPARTMENT.

SEC. 38. *Duties of City Attorney; to have one assistant.*
 —The Law Department shall consist of the offices of the City Attorney and the Prosecuting Attorney. The City Attorney shall be the chief legal adviser of the city and all offices and departments thereof; shall represent the city in all civil cases now pending or hereafter brought in any court, wherein the city or any officer thereof in his official capacity is a party; shall attend, when required, meetings of the

Board, draw ordinances, contracts, bonds, leases, and other documents involving any interest of the city, and inspect and pass upon all such documents already drawn; shall give his opinion in writing, when requested by the Board upon any question relating to the city, or the rights or duties of any city officer; shall appear in behalf of the city in all civil cases; shall, whenever it is brought to his knowledge that any city officer is guilty of neglect or misconduct in office, or that any person, firm, or corporation holding or exercising any franchise or public privilege from the city, has failed to comply with any condition, or to pay any consideration mentioned in the grant of such franchise or privilege, investigate the same and report to the Board; shall, when directed by the Board, institute and prosecute in the city's interest a suit on any bond, lease, or other contract, and upon any breach or violation thereof; prosecute and defend all civil actions related to or connected with any city office or interest of the city. He shall at all times render such professional services as the Board may require, and shall have such other powers and shall perform such other duties as may be prescribed by law or ordinance. He shall have one assistant, to be known as Assistant City Attorney.

SEC. 39. Duties of Prosecuting Attorney; to have three assistants.—The Prosecuting Attorney of the City of Manila shall have charge of the prosecution of all crimes, misdemeanors and violations of city ordinances, in the Court of First Instance and the municipal courts of the City of Manila. He shall investigate all charges of crimes, misdemeanors, and violations of ordinances, and prepare the necessary informations or make the necessary complaints against the persons accused, and discharge all other duties in respect to criminal prosecutions enjoined upon provincial fiscals in the General Provincial Act and the Criminal Code of Procedure. There shall be three assistant prosecuting attorneys, who shall assist the Prosecuting Attorney as he shall direct. The Prosecuting Attorney or any of his assistants may, if he deems it wise, conduct investigations in respect to crimes, misdemeanors and violations of ordinances by taking oral evidence of reputed witnesses, and for this purpose may, by subpoena, summon witnesses to appear and testify under oath before him, and the attend-

ance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the Court of First Instance.

No witness summoned to testify under this section shall be under obligation to give any testimony tending to criminate himself, and no testimony elicited from a witness by such examination under oath before the Prosecuting Attorney or his assistant under this section shall be used against such witness in any prosecution pending, or thereafter instituted against him, for any crime or offense.

SEC. 40. *Municipal Courts provided for.*—There shall be two judicial districts in the city, one of which shall include all territory within the police jurisdiction of the city north of the Pasig River, and the other all territory within the same jurisdiction south of said river. There shall be a municipal court in each of the two districts. The Civil Governor, by and with the consent of the Commission, shall appoint a Judge and a Clerk for each Municipal Court. Vacancies occurring in such clerkship after the first of March, 1902, shall be filled under the restrictions and provisions of the Civil Service Act. The municipal courts of the two districts shall have concurrent jurisdiction over crimes, misdemeanors and violations of ordinances committed on the waters of the Pasig River or Manila Bay within the police jurisdiction of the city. There shall be a daily session of each municipal court, Sundays and legal holidays alone excepted. In order to equalize the work of the courts so established, the judges and clerks may exercise their duties interchangeably in either district and the two judges may at the same time hold separate sessions of the court of one district and in such case the judge of the district shall divide the business to be done between himself and the visiting judge. Said court shall respectively have exclusive jurisdiction over all criminal cases arising under the ordinances of the city, and over all criminal cases arising under the penal laws of the Philippine Islands, where the offense is committed within the police jurisdiction of the city and their respective districts and the maximum punishment is by imprisonment for not more than six months, or a fine of not more than one hundred dollars, or both. Such courts may

also conduct preliminary examinations for any offense, without regard to the limits of punishment, and may release, or commit and bind over any person charged with such offense to secure his appearance before the proper court. Said courts shall have no civil jurisdiction except for the forfeiture and collection of bonds given in cases or proceedings pending therein. In a prosecution for the violation of any ordinance, the first process shall be a summons; provided, however, that a warrant for the arrest of the offender may be issued in the first instance upon the affidavit of any person that such ordinance has been violated, and that the person making the complaint has reasonable grounds to believe that the party charged is guilty thereof; and such warrant shall conclude, "Against the ordinances of the city in such case made and provided." All proceedings and prosecutions for offenses against the laws of the Philippine Islands shall conform to the rules relating to process, pleading, practice, and procedure now or hereafter established for the judiciary of the Islands, and such rules shall govern said police courts and their officers in all cases in so far as the same may be applicable. Every person arrested shall, without unnecessary delay, be brought before a municipal court or a court of first instance for preliminary hearing, release on bail or trial. Each judge shall have power to enforce all processes of the court, compel the attendance of witnesses and punish all contempts of court by fine or imprisonment, or both, under the limitations imposed by the Code of Civil Procedure. He may require of any person arrested a bond for good behavior or to keep the peace, or for the further appearance of such person before a court of competent jurisdiction, and no such bond shall be accepted unless it be executed by the person in whose behalf it is made, with sufficient surety or sureties to be approved by said court. There shall be taxed against and collected from the defendant, in case of his conviction in said court, such costs and fees as may be prescribed by the Board, which costs and fees shall not exceed those charged in criminal cases in justices' courts. All fines and forfeitures, fees and costs imposed shall be collected by the clerk of each court, who shall keep a docket of all fines,

forfeitures, costs, and fees imposed, and of those collected, and shall pay collections of the same to the City Assessor and Collector for the benefit of the city, on the next business day after the same are collected, and receive receipts therefor. The judge shall examine the dockets of fines, forfeitures, fees and costs each day, compare the same with the amount receipted for by the City Assessor and Collector, and satisfy himself that all fines, forfeitures, fees and costs have been duly accounted for. The judgments of each court may be enforced by imprisonment of any defendant adjudged guilty therein until the fines, fees, and costs assessed have been paid, or until the same shall have been satisfied by imprisonment at hard labor at the rate of twenty-five cents a day; and any such judgment may also be enforced by execution against the property of the defendant adjudged guilty therein. Each court shall also have power to administer oaths and to give certificates thereof; to issue summons, writs, warrants, executions, and all other processes necessary to enforce its orders and judgments. The clerk of each court shall have power to administer oaths. The clerk of each court shall keep its seal and affix it to all orders, judgments, certificates, records, and other documents issued by the court. He shall keep a docket of the trials in the court, in which he shall record in a summary manner the name of the defendant, the charge against him, the name of the prosecuting witness, the date of the arrest, the appearance of the defendant, the date of the trial, and the nature of the judgment, together with the fines and costs adjudged or collected in accordance with the judgment. The Chief of Police shall be the executive officer of each court and shall, either in person or by deputy, attend all sessions, serve all processes, and execute all orders and judgments of the same.

SEC. 41. *Certain requirements to be complied with before confinement of city prisoners.*—No person shall be confined in the city prison by sentence of either municipal court until the warden or officer in charge of the prison shall receive a written commitment showing the offense for which the prisoner was tried, the date of the trial, the exact terms of the judgment or sentence, and the date of the order of com-

mitment. The clerk shall, under seal of the court, issue such a commitment in each case of sentence to imprisonment.

SEC. 42. *Appeals to Courts of First Instance.*—An appeal shall lie to the Court of First Instance next to be held within the city in all cases where fine or imprisonment is imposed by a municipal court. Such appeals shall be governed by the rules of practice and procedure in judicial appeals from courts of first instance to the Supreme Court now or hereafter established by law. Pending an appeal, the defendant shall remain in custody, unless released upon sufficient bail, in accordance with the rules and regulations now or hereafter in force, to await the judgment of the appellate court.

SEC. 43. *Duties of Sheriff of Manila.*—The Sheriff of the City of Manila, appointed under Section 25 of Act 136, providing for the organization of courts, shall receive a salary at the rate of twenty-five hundred dollars per year. The Sheriff is hereby authorized to appoint two deputies at a salary of one hundred dollars per month each, and two deputies at a salary of sixty dollars per month each. The Sheriff and his deputies shall charge and collect for the service of all civil process the fees provided in the Code of Civil Procedure only, and all fees collected by them for such service shall be paid to the City Assessor and Collector, and the Sheriff shall be answerable therefor upon his bond. The fees charged by the Sheriff and his deputies for the service of criminal process shall be such as are provided in the Code of Criminal Procedure to be adopted, and when collected shall be paid to the City Assessor and Collector. Such fees shall be taxed as a part of the costs against defendants who are convicted in criminal prosecutions and sentenced to pay the costs. The Sheriff shall pay to the City Assessor and Collector, on the first day of each month, all fees collected by him and his deputies for the service of civil process during the preceding month, and shall at the same time deliver to the Auditor for the Philippine Archipelago an itemized statement of such fees. The salaries of the Sheriff and his deputies herein provided shall be paid from the revenues of the City of Manila. The Sheriff is also authorized to expend a sum not to exceed three dollars per

day for the transportation of prisoners by himself and deputies and for the general service of the process of the courts throughout his jurisdiction, and which shall be paid from the revenues of the city. The Sheriff may, in writing, appoint special deputies for the service of any particular process, who shall be paid only by fees, in accordance with the scale of fees provided in the Civil and Criminal Codes of Procedure. The Sheriff and his deputies shall be peace officers with the powers set forth in Section 37.

Sections 25 and 27 of Act No. 136, providing for the organization of courts, are hereby repealed so far as they conflict with this section, but in all other respects remain in full force.

SEC. 44. *Justices and auxiliary justices of the peace provided for.*—There shall be appointed by the Civil Governor, by and with the consent of the Commission, two justices of the peace and two auxiliary justices of the peace for the City of Manila, who shall be subject to removal in the manner provided for their appointment, and who shall exercise within the City of Manila the jurisdiction conferred upon justices of the peace in Act No. 136, providing for the organization of courts; but no justice of the peace, or auxiliary justice of the peace, of the City of Manila, shall exercise any criminal jurisdiction, such jurisdiction within the City of Manila being confined to Courts of First Instance and to the Municipal Courts herein provided. Each justice of the peace shall receive a salary of one thousand dollars per year, and shall charge and collect in all civil suits tried before him the fees provided for justices of the peace in the Code of Civil Procedure. All fees so charged and collected by him during each month shall be paid by him on the first day of the succeeding month to the City Assessor and Collector. He shall at the same time deliver to the Auditor for the Philippine Archipelago an itemized statement of all such fees, and his accounts shall be audited by the Auditor for the Philippine Archipelago, and for that purpose his dockets and books shall be examined by the Auditor. Auxiliary justices of the peace shall be paid by the justices of the peace out of their salaries, respectively, in proportion to the time that the auxiliary justice of the peace shall have per-

formed the duties of the justice. Each justice of the peace may appoint a clerk, at a salary of twenty-five dollars per month, to be paid out of the revenues of the city. The existing courts of the justices of the peace in the City of Manila are hereby abolished.

DEPARTMENT OF FIRES AND BUILDING INSPECTION.

SEC. 45. *Duties of Chief of Department of Fires and Building Inspection.*—There shall be, under the Board, a Chief of the Department of Fires and Building Inspection. He shall have the management and control of all matters relating to the administration of the department as herein provided, and the organization, government, discipline, and disposition of the fire force; shall have charge of fire engine houses, fire engines, hose carts, hooks and ladders, trucks, and other fire apparatus; shall have full police power in the vicinity of fires; shall have authority to remove any building or other property whenever it shall become necessary to prevent the spreading of fire or to protect adjacent property; shall investigate and report upon the origin and cause of all fires occurring within the city.

He shall inspect all buildings in the city under construction or repair and see that ordinances relating to the construction of buildings within fire limits are observed; shall inspect all private and public buildings erected or to be erected within the city, to determine whether they comply with the building ordinances applicable to fire limits or otherwise; shall have power to order, in accordance with ordinance and subject to the approval of the Municipal Board, buildings dangerous to the public to be taken down or made secure; shall supervise and regulate the stringing, grounding, and insulation of wires for all electrical connections with a view to avoiding conflagrations or interfering with public traffic or safety, or the obstruction of the necessary operations of the fire department in putting out fires; shall supervise and regulate the manufacture, storage, sale, and use of petroleum, gas, acetylene, gun powder, and other highly combustible matter and explosives, and the arrangement and use of engines, boilers, forges, and other

manufacturing and heating appliances in accordance with law or ordinances relating thereto; shall have charge of the city telegraph, telephone, and fire alarm services; and the laying of mains and connections for the purpose of supplying gas to the inhabitants of the city.

DEPARTMENT OF ASSESSMENTS AND COLLECTIONS.

SEC. 46. *Duties of City Assessor and Collector.*—There shall be, under the Board, a City Assessor and Collector, who shall have charge of the Department of Assessments and Collections. The real estate of the City of Manila shall be assessed and valued for taxation by the City Assessor and Collector and his authorized deputies, who are empowered to administer any oath authorized to be administered in the assessment or collection of taxes. It shall be the duty of every owner of real estate in the City of Manila to prepare, or cause to be prepared, a statement of the amount of land and the improvements thereon which he owns, the annual rent or income received by him from each piece of his property for each of the three years preceding the statement and a description sufficiently in detail to enable the City Assessor and Collector to identify the same on examination. The owner or his duly authorized agent shall verify such statement and swear to the same before any officer authorized by law to administer an oath. The statement shall be filed with the City Assessor and Collector on or before the first day of September, 1901. He shall make a list of all taxable real estate in the city, by districts, and the names of the owners in each district shall be arranged alphabetically, with a brief description opposite their names of the property owned by them and the cash value thereof. In making this list the City Assessor and Collector shall take into consideration any sworn statement made by the owners of the property, but shall not be prevented thereby from considering other evidence on the subject, and exercising his own judgment in respect thereto. For the purpose of completing this list he is authorized to summon witnesses, administer oaths to them, and subject them to examination concerning the ownership and the amount of real estate in

each district, and its cash value. It shall be the duty of the City Assessor and Collector, so far as is necessary, to examine the records of the office of the City Registrar showing the ownership of real estate in the city.

SEC. 47. *Rate per cent. of annual tax for the years 1901, 1902, and subsequent years.*—A tax of one per cent. on the assessed value of all real estate in the city subject to taxation as hereinbefore provided is hereby levied for the unexpired portion of the year 1901; provided, that every taxpayer who has paid the urbana tax on any house or building or who has paid the frontage tax on any real estate for the year 1901 shall receive a credit on the tax hereby levied for the amounts paid as urbana or frontage taxes. The laws, general orders, or regulations under which the urbana tax and the frontage tax are now collectible in the City of Manila are hereby repealed except as to arrearages as hereinafter provided. All taxes on real estate for the year 1901 shall be due and payable on or before the fifteenth day of February, 1902. An annual tax of one and one-half per cent. ($1\frac{1}{2}\%$) on the assessed value of all real estate in the city subject to taxation as hereinbefore provided is hereby levied for the year 1902, and an annual tax of two per cent. (2%) on the assessed value is hereby levied for the year 1903 and each subsequent year. All taxes for the year 1902 and each year thereafter shall be due and payable on or before the first day of July of each year, and if any taxpayer shall fail to pay the taxes assessed against him for the year 1901 on or before the first day of March, 1902, or shall fail to pay such taxes assessed against him for the year 1902, and each succeeding year thereafter, on or before the first day of July of each year respectively, he shall be delinquent in such payment, and shall be subject to an additional tax of fifteen per cent. (15%) of the amount of the original tax as a penalty for such delinquency, to be collected at the same time and in the same manner as the original tax; provided, that at the option of the taxpayer the payment of one-half of the tax for the year 1902 and each succeeding year thereafter may be postponed until the 31st day of December of such year, but if he fail to pay the first half of the tax on or before the first day of July, then the

tax for the whole year shall be delinquent, and the penalty shall be due as hereinbefore provided. If any taxpayer, having paid the first half of the taxes due for the year 1902 or any succeeding year, shall fail to pay the remaining half of the tax due for such year on or before the 31st day of December of that year, the penalty to be collected shall be fifteen per cent. (15%) of the half of such annual tax then due. The penalties thus imposed shall be accounted for by the City Assessor and Collector in the same manner as the tax. In the event that such tax and penalty shall remain unpaid for fifteen days after the tax has become delinquent the City Assessor and Collector shall proceed to make collection thereof in the manner prescribed in Sections 75, 76, 77, 78, 79, 80, 81, 82 and 83 of the Municipal Code, and all the provisions of said sections shall be applicable, and all the powers and duties conferred and imposed by said sections upon the Provincial Treasurer are imposed upon the City Assessor and Collector. The provisions of Sections 83, 84, 85 and 86 of the Municipal Code are hereby declared applicable as fully as though incorporated herein to all taxes assessed, penalties accruing, sales made of the real estate of the delinquent taxpayer, and suits instituted by him attacking the assessment of such taxes or the validity of sales made hereunder. It shall not be essential to the validity of tax sales of real estate hereunder that the City Assessor and Collector shall have attempted to make out of the personal property of the taxpayer the tax due upon his real estate. The remedy provided in the Municipal Code for the collection of taxes upon real estate by levying upon the personal property of the taxpayer shall be deemed to be cumulative only. The lien upon the real estate for taxes levied for the year 1901 shall attach upon the passage of this act. A lien for taxes due for any subsequent year shall attach on the first day of January of such year.

SEC. 48. *Exemptions from taxation.*—Lands or buildings owned by the United States of America, the central government of the Philippine Islands, of the City of Manila, and burying-grounds, churches, and their adjacent parsonages and conventos, and lands or buildings used exclusively for religious, charitable, scientific or educational purposes,

and not for profit, shall be exempt from taxation; but such exemption shall not extend to lands or buildings held for investment, though the income therefrom be devoted to religious, charitable, scientific or educational purposes.

SEC. 49. *Action in case owner of real estate fails to make return thereof.*—If the owner of any parcel of real estate shall fail to make a return thereof, as provided in Section 46, or if the City Assessor and Collector is unable to discover the owner of any real estate, he shall nevertheless list the same for taxation, charge the tax against the true owner, if known, and if unknown then as against an unknown owner. In case of doubt or dispute as to ownership of real estate, the taxes shall be levied against the possessor or possessors thereof. Where it shall appear that there are separate owners of the land and the improvements thereon, a separate assesment of the property of each shall be made.

In case the land and improvements, a statement of which it is the duty of the owner hereunder to file with the City Assessor and Collector, shall have been leased to another before the date of this act on terms such that the leasehold held by the lessee is valuable, the owner of the land may in his statement request that the lessee or tenant of the leasehold be cited to appear and make a sworn statement of its value before the City Assessor and Collector. The City Assessor and Collector shall then proceed as in other cases to fix and assess the value of the leasehold. The owner of the land and improvements shall be required to pay taxes only on the total value of the land and improvements, less the value of the leasehold, while the lessee or tenant of the leasehold shall have assessed against him, and be required to pay, taxes upon the value of the leasehold. The remedies hereinbefore provided for the sale of land for collection of delinquent taxes thereon shall be applicable to the collection of delinquent taxes on leaseholds.

SEC. 50. *Action in case real estate has escaped taxation.*—If it shall be discovered by the City Assessor and Collector, or brought to his attention, that any taxable real estate in the city has escaped listing, it shall be his duty at once to list and value the same and charge against the owner thereof

the taxes due for the current year and for all other years since the original assessment under this charter was made, and the taxes thus assessed shall be legal and collectible by all the remedies herein provided, and interest and penalty shall be added to the back taxes as if they were assessed at the time when they should have been assessed.

SEC. 51. *Certificate to be made by City Assessor and Collector.*—The City Assessor and Collector shall complete the listing and valuation of all real estate situated within the city on or before the first day of December, 1901, and when completed shall authenticate the same by signing the following certificate at the foot of the list:

"I hereby certify that the foregoing list contains a true statement of the piece or pieces of taxable real estate belonging to each person named in the list, and its true cash value, and that no real estate taxable by law in the City of Manila has been omitted from this list, according to the best of my knowledge and belief."

(Signature.)

The City Assessor and Collector shall also authenticate subsequent assessments, as hereinafter provided for, by signing the foregoing certificate in connection with each such assessment.

SEC. 52. *Notice to be given to public when tax list is completed.*—When the list shall be completed in accordance with the foregoing section the City Assessor and Collector shall, by notice published for ten days in two newspapers of general circulation in the city, one printed in English and one in Spanish, inform the public that the list has been completed and is on file in his office, and may be examined by any person interested therein, and that upon a date fixed in the notice, which shall not be later than the 15th day of December, the City Assessor and Collector will be in his office for the purpose of hearing complaints as to the accuracy of the listing of the property and the assessed value thereof. It shall be his duty carefully to preserve and record in his office copies of said notices. On the day fixed in the notice, and for seven days thereafter, he shall be present in his office to hear all complaints filed within that period by persons against whom taxes have been assessed as owners of

real estate, and he shall make his decision and enter the same in a well-bound book, to be by him kept for that purpose, within fourteen days from the date fixed for hearing complaints in such notice, and if he shall determine that injustice has been done or errors have been committed he is authorized to amend the list in accordance with his findings.

SEC. 53. *Appeals from decisions of City Assessor and Collector.*—In case any complaint before the City Assessor and Collector shall feel aggrieved by his decision, such complainant may, within ten days after the entry of such decision, appeal to the Board of Tax Appeals constituted as hereinafter provided. He shall perfect his appeal by filing a written notice of the same with the City Assessor and Collector, and it shall be the duty of that officer forthwith to transmit the appeal to the Board of Tax Appeals with all written evidence in his possession relating to such assessment and valuation.

SEC. 54. *Board of Tax Appeals constituted.*—The Municipal Board shall constitute the Board of Tax Appeals. The President of the Municipal Board shall be President of the Board of Tax Appeals, and the Secretary to the Municipal Board shall be the Secretary to the Board of Tax Appeals and shall keep the record of its proceedings.

SEC. 55. *Oath to be taken by each member of Board of Tax Appeals.*—Before organizing as such, the members of the Board of Tax Appeals shall take the following oath before a justice of the peace or some other officer authorized to administer an oath in the City of Manila:

"I do solemnly swear (or affirm) that I will well and truly hear and determine all matters and issues between taxpayers and the City Assessor and Collector submitted for my decision; so help me God." (In case of affirmation the last four words to be stricken out.)

(Signature.)

"Subscribed and sworn to (or affirmed) before me thisday of....., 19...."

.....
(Signature of officer administering oath.)

The oath of each member shall be recorded by the Secretary of the Board in the minutes of its proceedings.

SEC. 56. *Meetings of Board of Tax Appeals.*—The Board of Tax Appeals shall meet on the second Monday in January, 1902, and each succeeding year, and shall hear all appeals duly transmitted to it, and shall decide the same within fifteen days. It shall have authority to cause to be amended the listing and valuation of the property in respect to which any complaint is made by order signed by the Board or a majority thereof, and transmit it to the City Assessor and Collector, who shall amend the tax list in conformity with said order.

SEC. 57. *When assessment may be increased or reduced.*—The City Assessor and Collector shall, during the first three days of December of each year after the year 1901, add to the list of taxable real estate in the city, the value of the improvements placed upon such property during the preceding year, and reduce the assessments against any taxpayer whose improvements already assessed have been destroyed during the preceding year, and shall add to the list any property which is taxable and which has theretofore escaped taxation. He shall give ten days' notice by publication in two newspapers of general circulation published in the City of Manila, one printed in English and one in Spanish, that he will be present in his office for that purpose on said days. Appeals may be taken from the decisions of the City Assessor and Collector, under this section, to the Board of Tax Appeals, as in case of original assessments.

SEC. 58. *Duration of first and subsequent assessments.*—The assessment first made under the provisions of this charter, as amended from time to time, shall continue in force for the period of three years, unless an earlier provision is made by law for another general assessment. The City Assessor and Collector shall, at the close of said three years, and at the close of each period of five years thereafter, make a new assessment in accordance with the provisions of this charter, and the taxpayer shall have the same remedies by appeal for unjust assessment and valuation as are provided for the first assessment.

SEC. 59. *Money to be applied to school purposes.*—One-fourth of all moneys realized from the real estate tax herein provided for shall be devoted exclusively to the sup-

port of free public primary schools of the city, and to the erection and maintenance of suitable school buildings. The Municipal Board may, however, in its discretion, apply to the Commission for appropriations from the general resources of the city of additional funds for the support of such schools and the maintenance of such buildings.

SEC. 60. *Cedula or registration tax*.—All the provisions of Sections 26, 27, 28, 29, 30, 31, 32, 34 and 35 of Act No. 133, entitled "An Act to Amend the Provincial Government Act, No. 83," and which provides for the collection of an annual cedula or registration tax, are hereby made applicable to the City of Manila and its inhabitants, and the City Assessor and Collector shall discharge the same duties in respect to said tax and its collection that the Provincial Treasurer discharges under the above mentioned sections of Act No. 133.

SEC. 61. *City Assessor and Collector to collect all taxes, licenses, etc.*—The City Assessor and Collector shall collect all taxes and assessments due the city, all licenses authorized by law or ordinance, all rents for lands, markets, and other property owned by the city, and shall receive and receipt for all fines, forfeitures, fees, and costs imposed by municipal courts, from the clerks thereof, and the fees collected by the Sheriff of Manila or his deputies, or by the justices of the peace of Manila. He shall deposit each day in the Treasury of the Philippine Archipelago all moneys belonging to the city received on the previous business day; shall give bond to the city in such sum and with such surety or sureties as the Municipal Board may prescribe, for the faithful performance of the official duties of himself and his deputies or assistants and the deposit of all sums of money that may come into his or their hands officially in the Treasury of the Philippine Archipelago; shall, on or before the tenth day of each month, submit to the Auditor for the Philippine Archipelago, an account current with abstracts of collections and abstracts of deposits, covering all transactions of his office during the preceding month; shall, on or before the tenth day of July of each year, prepare in duplicate an itemized statement of the receipts and deposits with the Treasury of the Philippine Archipelago for the preceding

fiscal year, and shall transmit the same to the Board through the Auditor for the Philippine Archipelago. He shall perform such other duties as the Board may, by ordinance, prescribe.

SEC. 62. *City Assessor and Collector to collect Internal Revenue Tax.*—The City Assessor and Collector shall hereafter collect for the benefit of the city all taxes due under the law or orders imposing internal revenue taxes collectible within the City of Manila, and shall deposit the same with the Treasurer of the Archipelago to the credit of the city; provided, that this shall not include the urbana tax hereinbefore abolished; and provided further, that it shall not include the collections made at the instance of the Chief of the Bureau of Forestry, or his subordinates, within the City of Manila, for timber, and timber products cut or taken from the public lands in the provinces outside the City of Manila. Until further provided by law the City Assessor and Collector shall also act as the Collector of Internal Revenue: in those parts of the islands not within organized provincial governments and not within the City of Manila.

SEC. 63. *Chief Deputy Assessor and Chief Deputy Collector provided for.*—There shall be a chief deputy assessor and a chief deputy collector in the office of the Department of Assessments and Collections who shall be appointed by the Civil Governor, by and with the consent of the Commission. Their successors shall be appointed by the Board under the provisions of the Civil Service Act.

SEC. 64. *Collection and disposition of taxes now in force.*—All licenses and taxes, rents and income due and collectible under law, ordinance, general orders or regulations, by the Provost Marshal General or his subordinates, or by any Insular officer, for the benefit of the territory now incorporated as the City of Manila, which shall be delinquent at the time of the passage of this act, except such as are herein specially abolished, shall be collected for the benefit of the city by the City Assessor and Collector in the same method and with the same penalties as would be applicable had this act not been adopted. A failure to pay delinquent urbana and frontage taxes for the years 1899 and 1900 within thirty days after the passage of this act shall impose upon

the taxpayer so delinquent a penalty of 15% and interest at rate of 10% from the date of the passage of this act until payment. In the event such delinquent taxpayer shall neglect to pay the urbana or frontage taxes so due for thirty days after the passage of this act, it shall be the duty of the Assessor and Collector to proceed against such delinquent taxpayer and the property upon which such urbana or frontage taxes are due in manner and form and with like effect as provided in this act for the collection of delinquent taxes upon real estate, the provisions of which are hereby declared applicable to such delinquent urbana and frontage taxes.

ADVISORY BOARD, POWERS AND DUTIES THEREOF.

SEC. 65. There shall be an Advisory Board of the city, to consist of one member appointed by the Civil Governor, by and with the consent of the Commission, from each of the eleven city districts as they existed under the Spanish Government. Within ten days after their appointment the members of the Board shall meet at a place and time to be designated by the Civil Governor and shall organize by the election of a president and of a secretary. The Board shall hold regular meetings once every two weeks, upon a day and at a time to be fixed by resolution of the Board. Each member of the Board shall receive five dollars (\$5.00) for each regular meeting which he attends. The Secretary of the Board shall have a permanent office and shall receive a salary of fourteen hundred dollars (\$1,400.00) a year. The Municipal Board shall provide the Advisory Board with a suitable room in which to hold its meetings, and with a suitable office for its Secretary, and with such furniture, stationery and other supplies as may be suitable. It shall be the duty of the Advisory Board to bring to the attention of the Municipal Board the special needs of the city and its inhabitants, and it shall make such suggestions and recommendations relative thereto as it may from time to time deem necessary. It shall consider petitions presented by residents or inhabitants of the city and it shall report its recommendations thereon to the Municipal Board. It shall furnish such further information relating to existing con-

83

ditions within the city and the several districts thereof as may be requested by the Municipal Board. In case it shall deem further legislation by the Commission necessary for the good of the city and its inhabitants it shall make proper recommendations in relation thereto. The Municipal Board shall not have power to pass any ordinances fixing license fees, or involving the liability of the city in any sum exceeding ten thousand dollars (\$10,000.00), or denouncing as an offense the violation of any city ordinance, and imposing a penalty and fine or imprisonment therefor, or directing the condemnation of any property for the use of the city, or making any contract for improvements in the city which shall probably involve an expenditure of more than ten thousand dollars (\$10,000.00), without first having submitted for comment, discussion and recommendation the proposed ordinance to the Advisory Board, and received from the Advisory Board its recommendations thereon. Should the Advisory Board, however, delay action upon the ordinance thus presented to it for its consideration and recommendations, for more than two weeks after the same shall have been received and receipted for by its Secretary, the Municipal Board may proceed to adopt the ordinance without awaiting action by the Advisory Board. No person shall be eligible to appointment as a member of the Advisory Board from a particular district unless he is a *bona fide* resident of such district at the time of appointment. .

SEC. 66. *Eligibility for appointment under city government.*—No person shall be eligible for appointment to any official position under the city government who is not either a citizen of the United States, a native of the Philippine Islands, a person who by virtue of the Treaty of Paris is entitled to the political rights of a native of the Philippine Islands, or a person who having served in the army or navy of the United States has been honorably discharged therefrom and has taken the oath of allegiance to the United States.

SEC. 67. *United States money referred to.*—All sums of money herein mentioned shall be held to refer to money of the United States unless otherwise expressly provided.

SEC. 68. *City not to be liable for damages, etc.*—The city

shall not be liable or held for damages or injuries to persons or property arising from the failure of the Municipal Board, or any city officer, to enforce the provisions of this charter, or any law or ordinance, or from negligence of said Board or other officers while enforcing, or attempting to enforce, the same.

SEC. 69. *Existing city ordinances, etc., to continue in force unless repealed or modified.*—All city ordinances and orders in force at the time of the passage of this act, and not inconsistent herewith, shall continue in force until they are repealed or modified by ordinances passed in accordance with the provisions of this act.

SEC. 70.—*Liquor licenses granted by Board.*—The powers and duties in reference to the granting of liquor licenses and the forfeiting of the same, in the City of Manila, now conferred upon the Provost Marshal General, are hereby transferred to the Municipal Board hereinbefore created.

SEC. 71. *Insular Purchasing Agent given control of property purchased out of civil funds.*—The Quartermaster of the Provost Guard is hereby directed to deliver to the Insular Purchasing Agent all the property held by him purchased out of civil funds for the use of the departments and bureaus of the city government under the Provost Marshal General, taking proper receipts from the Insular Purchasing Agent. It shall also be his duty to transfer to the Insular Purchasing Agent all the property received by him from the Disbursing Quartermaster for Civil Bureaus prior to July 1, 1901, and purchased by the Disbursing Quartermaster for Civil Bureaus out of public civil funds for the use of the civil departments of the civil government, taking like receipts from the Insular Purchasing Agent for this property.

SEC. 72. *Repeal of former acts, orders and regulations.*—All acts, orders and regulations, and parts of the same, which are inconsistent with the provisions of this act are hereby repealed, and this act shall take effect upon the proclamation of the Civil Governor, to be issued within thirty days after the passage of the act.

Enacted, July 31, 1901.

VILAS *v.* CITY OF MANILA.

TRIGAS *v.* SAME.

AGUADO *v.* SAME.

ERROR TO AND APPEALS FROM THE SUPREME COURT OF
THE PHILIPPINE ISLANDS.

Nos. 53, 54, 207. Argued February 24, 27, 1911.—Decided April 3, 1911.

Even if there is no remedy adequate to the collection of a claim against a governmental subdivision when reduced to judgment, a plaintiff having a valid claim is entitled to maintain an action thereon and reduce it to judgment.

Where the case turned below on the consequence of a change in sovereignty by reason of the cession of the Philippine Islands, the construction of the treaty with Spain of 1898 is involved, and this court has jurisdiction of an appeal from the Supreme Court of the Philip-

Argument for Plaintiff in Error and Appellants. 220 U. S.

pine Islands under § 10 of the act of July 1, 1902, c. 1369, 32 Stat. 691, 695.

While military occupation or territorial cession may work a suspension of the governmental functions of municipal corporations, such occupation or cession does not result in their dissolution.

While there is a total abrogation of the former political relations of inhabitants of ceded territory, and an abrogation of laws in conflict with the political character of the substituted sovereign, the great body of municipal law regulating private and domestic rights continues in force until abrogated or changed by the new ruler.

Although the United States might have extinguished every municipality in the territory ceded by Spain under the treaty of 1898, it will not, in view of the practice of nations to the contrary, be presumed to have done so.

The legal entity of the city of Manila survived both its military occupation by, and its cession to, the United States; and, as in law, the present city as the successor of the former city, is entitled to the property rights of its predecessor, it is also subject to its liabilities.

The cession in the treaty of 1898 of all the public property of Spain in the Philippine Islands did not include property belonging to municipalities, and the agreement against impairment of property and private property rights in that treaty applied to the property of municipalities and claims against municipalities.

One supplying goods to a municipality does so, in the absence of specific provision, on its general faith and credit, and not as against special funds in its possession; and even if such goods are supplied for a purpose for which the special funds are held no specific lien is created thereon.

THE facts, which involve the liability of the present city of Manila in the Philippine Islands for claims against the city of Manila as it existed prior to the cession under the treaty of 1898, are stated in the opinion.

Mr. Frederic R. Coudert and Mr. Howard Thayer Kingsbury, with whom Mr. Paul Fuller and Mr. Harry Weston Van Dyke were on the brief, for plaintiff in error and appellants:

The outstanding obligations of the city of Manila were not impaired by the change of sovereignty, but were pre-

220 U. S. Argument for Plaintiff in Error and Appellants.

served by the treaty and expressly recognized by the United States Government.

A municipal corporation is not only a governmental subdivision but also an association of the members of a particular community for the administration of their local business and affairs in matters largely outside of the sphere of government as such.

As to the distinction between sovereign rights of government and corporate capacity, see *South Carolina v. United States*, 199 U. S. 437, 462; *Lloyd v. Mayor*, 5 N. Y. 369, 374; *Western Fund Society v. Philadelphia*, 31 Pa. St. 175.

A municipality is not a sovereignty. *Metropolitan Ry. Co. v. District of Columbia*, 132 U. S. 1, 9; *Merryweather Claim*, Magoon on the Law of Civil Government under Military Occupation, 407, 414; see also Magoon on Civil Government, 457-460; 22 Ops. Att. Gen. 526.

After the cession of California it was held by this court that the Pueblo of San Francisco which had existed as a municipal organization prior to the cession, continued to exist as such corporation in spite of the change of sovereignty and that such change of sovereignty left its property rights and obligations unimpaired. See *Townsend v. Greeley*, 5 Wall. 326; *Merryman v. Bourne*, 9 Wall. 592; *Moore v. Steinbach*, 127 U. S. 70; *Los Angeles Milling Co. v. Los Angeles*, 217 U. S. 217; *Smith v. Morse*, 2 California, 524; *Cohas v. Raisin*, 3 California, 443; *Hart v. Burnett*, 15 California, 530; and as to effect of Civil War, see *New Orleans v. Steamship Co.*, 20 Wall. 387.

The city of Manila, as at present constituted, is the successor of the city of Manila as existing under Spanish sovereignty, in respect to both its rights and obligations, and is therefore liable for the debts of the municipality which were outstanding at the time of the cession. *Mobile v. Watson*, 116 U. S. 289; *Shapleigh v. San Angelo*, 167 U. S. 646; and see *Broughton v. Pensacola*, 93 U. S. 266;

Argument for Plaintiff in Error and Appellants. 220 U. S.

Mt. Pleasant v. Beckwith, 100 U. S. 514; *Mobile v. Watson*, 116 U. S. 289; *Comanche County v. Lewis*, 133 U. S. 198; *Van Hoffman v. City of Quincy*, 4 Wall. 535; *Girard v. Philadelphia*, 7 Wall. 1; *Barnes v. District of Columbia*, 91 U. S. 540; *New Orleans v. Clark*, 95 U. S. 644; *Meriwether v. Garrett*, 102 U. S. 472; *New Orleans v. Morris*, 105 U. S. 600; *Amy v. Watertown*, 130 U. S. 301; *Metropolitan Ry. Co. v. District of Columbia*, 132 U. S. 1; *District of Columbia v. Woodbury*, 136 U. S. 450.

The municipality of Manila did not disappear as a municipal government entity upon the capture of the city, but continued to exist and was recognized as so continuing by the capitulation, the general orders of the military authorities, the treaty and the President's instructions to the commission. Gen. Orders No. 4 of August 15, 1898. The protocols of the treaty show that the distinction between sovereign indebtedness and local obligations was recognized throughout the negotiations. Sen. Doc. 62, 55th Cong., 3d Sess., p. 261.

The claims of its own citizens or subjects which each Government relinquished, were those "against the other Government." Treaty, Art. VIII; 23 Op. Atty. Gen. 181, 190; Taylor's Int. Pub. Law, §§ 165, 168.

Plaintiff's claims are "property" within the meaning of the treaty. *Soulard v. United States*, 4 Pet. 511; *United States v. Reynes*, 9 How. 127; *O'Reilly v. Brooke*, 209 U. S. 45, distinguished.

The juristic personality of municipal corporations and their liability to suit were recognized and established by the Roman law and the Spanish law, both ancient and modern. See Digest of Justinian, Lib. III, Tit. IV, 1, 7; Ulpian on the Edict, 10; *Ibid.*, 1; 8 Javolenus, extracts from Cassius, 15; Monro's Translations, Vol. 1, p. 174; Savigny on Jural Relations, translated by Rattigan, §§ 86 *et seq.* The same doctrine is declared in the early Spanish codes. Partida Third, Title II, Law XIII; No-

220 U. S. Argument for Defendant in Error and Appellees.

visima Recopilacion, Book VII, Title XX, Law II; Laws of the Indies, Book IV, Title XI, Law 1; Spanish Laws Codified in 1877, Arts. 1, 30; Alcubilla's *Diccionario de la Administracion Española*, Vol. 1, pp. 839-863, sub. tit. *Ayuntamientos*; Alcubilla, Vol. 1, p. 872; Vol. 3, pp. 1036-1038.

The plaintiffs are entitled to the remedies of judgment and execution for the enforcement of their claims. *New Orleans v. Morris*, 105 U. S. 600; *Seibert v. Lewis*, 122 U. S. 284; *Memphis v. United States*, 97 U. S. 293; *Riggs v. Johnson County*, 6 Wall. 193; *Knox County v. Aspinwall*, 24 How. 376; *Workman v. New York*, 179 U. S. 552, 565.

The city of Manila holds the Carriedo Fund as a trustee and such fund is liable for obligations incurred in the administration of the Carriedo Water Works. Rep. of Phil. Com. for 1900, Vol. 3, p. 49; 1 Ops. Atty. Gen. P. I. 319, 323, 450, 452, 543; Dillon's *Mun. Corp.*, 4th ed., §§ 19-21; *Vidal v. Girard*, 2 How. 127; *Girard v. Philadelphia*, 7 Wall. 1; *United States v. Railroad Co.*, 17 Wall. 322; *Commissioners v. Lucas*, 93 U. S. 108, 115; *Hunter v. Pittsburgh*, 207 U. S. 161, 179; *Philadelphia v. Fox*, 64 Pa. St. 169, 182; *People v. Hurlbut*, 9 Am. Rep. 108.

A trustee may incur liabilities or make expenditures for the protection of the trust estate, and, *a fortiori*, for the performance of the trust itself, and he may indemnify himself by recourse to the trust property, upon which he has a lien for this purpose. *New v. Nicoll*, 73 N. Y. 127; *Noyes v. Blakeman*, 6 N. Y. 567, 580, and cases cited; *Van Slyke v. Bush*, 123 N. Y. 47.

Mr. Paul Charlton, with whom *Mr. Isaac Adams* was on the brief, for defendant in error and appellees:

As to what constitutes "property," as that word was used in Art. VIII of the treaty of Paris, see *O'Reilly v. Brooke*, 209 U. S. 45.

A contract for furnishing coal, or for collecting taxes

Argument for Defendant in Error and Appellees. 220 U. S.

for one year, or for furnishing material or performing labor, all of which would be concluded, and all rights thereunder extinguished, by payment or by lapse of time, were clearly not such "property" as was in the mind of the commissioners who concluded the treaty of Paris. The treaty, especially as illuminated by the protocols, makes clear distinction between the relation which the United States was willing to assume toward the island of Cuba and its affairs, and that which it was willing to assume toward the Philippine Islands and their affairs.

The words "property" and "rights" there guaranteed were, specifically, those which related to the peaceful possession of property of all kinds.

The United States has scrupulously fulfilled the obligation it assumed in Arts. I and VII of the treaty with relation to its responsibility for obligations incurred during its occupation of Cuba, and in the settlement and adjudication of claims of its citizens for damages specified in said Art. VII. The Spanish Treaty Claims Commission was organized, has performed the functions of its creation, and has been dissolved; no claim which could rightfully arise under the obligation assumed in those articles of the treaty remains undetermined.

The city of Manila, as at present constituted, is not the successor of the city of Manila as existing under Spanish sovereignty in respect to both its rights and obligations, and is not liable for the debts of the municipality which were outstanding at the time of the cession.

At the time of the acquisition of sovereignty by the United States over the Philippine Islands, the inhabitants thereof had only such rights as were granted by the grace of the United States, and later, such as were secured to them under the treaty of Paris, and the Organic Act of July 1, 1902, and its amendments.

The juristic personality of municipal corporations and their liability to suit was not, as claimed by plaintiff,

220 U. S.

Opinion of the Court.

recognized and established by the Roman law and the Spanish law, both ancient and modern. See Dictionary of Alcubilla, supplement of 1894.

The plaintiffs are not entitled to the remedies of judgment and execution for the enforcement of their claims. *Hoey v. Baldwin*, 1 Phil. Rep. 551.

A municipality has only such implied powers as are necessary to effectuate the specific grants of its charter, and as the charter of the city of Manila neither contains any authority to assume the obligations of the Ayuntamiento of Manila, nor any words which, by necessary legal implication, could be held to include such authority or obligation, no right existed in favor of plaintiffs in error which the city of Manila had either authority or obligation to satisfy.

The city of Manila does not hold the Carriedo Fund as a trustee and such fund is liable for obligations incurred in the administration of the Carriedo Water Works.

Under the facts in this case and as it is impossible to separate the moneys or property captured into classes referable to their sources, there can be no specific responsive liability to the claims of plaintiffs.

MR. JUSTICE LURTON delivered the opinion of the court.

The plaintiffs in error, who were plaintiffs below, are creditors of the city of Manila as it existed before the cession of the Philippine Islands to the United States by the treaty of Paris, December 10, 1898. Upon the theory that the city under its present charter from the government of the Philippine Islands is the same juristic person and liable upon the obligations of the old city, these actions were brought against it. The Supreme Court of the Philippine Islands denied relief, holding that the present municipality is a totally different corporate entity, and in no way liable for the debts of the Spanish municipality.

The fundamental question is whether, notwithstanding the cession of the Philippine Islands to the United States, followed by a reincorporation of the city, the present municipality is liable for the obligations of the city incurred prior to the cession to the United States.

We shall confine ourselves to the question whether the plaintiffs in error are entitled to judgments against the city upon their several claims. Whether there is a remedy adequate to the collection when reduced to judgment is not presented by the record. But whether there is or is not a remedy, affords no reason why the plaintiffs in error may not reduce their claims to judgment. *Mt. Pleasant v. Beckwith*, 100 U. S. 514, 530. The city confessedly may be sued under its existing charter, and that implies at least a right to judgment if they establish their demands.

The city as now incorporated has succeeded to all of the property rights of the old city and to the right to enforce all of its causes of action. There is identity of purpose between the Spanish and American charters and substantial identity of municipal powers. The area and the inhabitants incorporated are substantially the same. But for the change of sovereignty which has occurred under the treaty of Paris, the question of the liability of the city under its new charter for the debts of the old city would seem to be of easy solution. The principal question would therefore seem to be the legal consequence of the cession referred to upon the property rights and civil obligations of the city incurred before the cession. And so the question was made to turn in the court below upon the consequence of a change in sovereignty and a reincorporation of the city by the substituted sovereignty.

This disposes of the question of the jurisdiction of this court grounded upon the absence from the petition of the plaintiffs of any distinct claim under the treaty of Paris, since under § 10 of the Philippine Organic Act

220 U. S.

Opinion of the Court.

of July 1, 1902, this court is given jurisdiction to review any final decree or judgment of the Supreme Court of the Philippine Islands where any treaty of the United States "is involved." That treaty was necessarily "involved," since neither the court below nor this court can determine the continuity of the municipality nor the liability of the city as it now exists for the obligation of the old city, without considering the effect of the change of sovereignty resulting from that treaty. See *Reavis v. Fianza*, 215 U. S. 16, 22.

The historical continuity of a municipality embracing the inhabitants of the territory now occupied by the city of Manila is impressive. Before the conquest of the Philippine Islands by Spain, Manila existed. The Spaniards found on the spot now occupied a populous and fortified community of Moros. In 1571 they occupied what was then and is now known as Manila, and established it as a municipal corporation. In 1574 there was conferred upon it the title of "Illustrious and ever loyal city of Manila." From time to time there occurred amendments, and, on January 19, 1894, there was a reorganization of the city government under a royal decree of that date. Under that charter there was power to incur debts for municipal purposes and power to sue and be sued. The obligations here in suit were incurred under the charter referred to, and are obviously obligations strictly within the provision of the municipal power. To pay judgments upon such debts it was the duty of the Ayuntamiento of Manila, which was the corporate name of the old city, to make provision in its budget.

The contention that the liability of the city upon such obligations was destroyed by a mere change of sovereignty is obviously one which is without a shadow of moral force, and, if true, must result from settled principles of rigid law. While the contracts from which the claims in suit resulted were in progress, war between the United

States and Spain ensued. On August 13, 1898, the city was occupied by the forces of this Government and its affairs conducted by military authority. On July 31, 1901, the present incorporating act was passed, and the city since that time has been an autonomous municipality. The charter in force is act 183 of the Philippine Commission and now may be found as chapters 68 to 75 of the Compiled Acts of the Philippine Commission. The first section of the charter of 1901 reads as follows:

"The inhabitants of the city of Manila, residing within the territory described in section 2 of this act, are hereby constituted a municipality, which shall be known as the city of Manila and by that name shall have perpetual succession, and shall possess all the rights of property herein granted or heretofore enjoyed and possessed by the city of Manila as organized under Spanish sovereignty."

The boundaries described in § 2 include substantially the area and inhabitants which had theretofore constituted the old city.

By § 4 of the same act the government of the city was invested in a municipal board.

Section 16 grants certain legislative powers to the board, and provides that it shall "take possession of all lands, buildings, offices, books, papers, records, moneys, credits, securities, assets, accounts, or other property or rights belonging to the former city of Manila or pertaining to the business or interests thereof, and, subject to the provisions herein set forth, shall have control of all its property except the building known as the Ayuntamiento, provision for the occupation and control of which is made in § 15 of this act; shall collect taxes and other revenues, and apply the same in accordance with appropriations, as hereinbefore provided, to the payment of the municipal expenses; shall supervise and control the discharge of official duties by subordinates; shall institute judicial proceedings to recover property and

220 U. S.

Opinion of the Court.

funds of the city wherever found or otherwise to protect the interests of the city, and shall defend all suits against the city," etc.

Section 69 of the charter expressly preserved "all city ordinances and orders in force at the time of the passage of this act and not inconsistent herewith," until modified or repealed by ordinances passed under this act.

Section 72 is the repealing clause, and provides for the repeal of "all acts, orders and regulations" which are inconsistent with the provisions of the act.

The charter contains no reference to the obligations or contracts of the old city.

If we understand the argument against the liability here asserted, it proceeds mainly upon the theory that inasmuch as the predecessor of the present city, the Ayuntamiento of Manila, was a corporate entity created by the Spanish government, when the sovereignty of Spain in the islands was terminated by the treaty of cession, if not by the capitulation of August 13, 1908, the municipality *ipso facto* disappeared for all purposes. This conclusion is reached upon the supposed analogy to the doctrine of principal and agent, the death of the principal ending the agency. So complete is the supposed death and annihilation of a municipal entity by extinction of sovereignty of the creating State that it was said in one of the opinions below that all of the public property of Manila passed to the United States, "for a consideration, which was paid," and that the United States was therefore justified in creating an absolutely new municipality and endowing it with all of the assets of the defunct city, free from any obligation to the creditors of that city. And so the matter was dismissed in the *Trigas Case* by the Court of First Instance, by the suggestion that "the plaintiff may have a claim against the crown of Spain, which has received from the United States payment for that done by the plaintiff."

We are unable to agree with the argument. It loses sight of the dual character of municipal corporations. They exercise powers which are governmental and powers which are of a private or business character. In the one character a municipal corporation is a governmental subdivision, and for that purpose exercises by delegation a part of the sovereignty of the State. In the other character it is a mere legal entity or juristic person. In the latter character it stands for the community in the administration of local affairs wholly beyond the sphere of the public purposes for which its governmental powers are conferred.

The distinction is observed in *South Carolina v. United States*, 199 U. S. 437, 461, where *Lloyd v. Mayor of New York*, 5 N. Y. 369, 374, and *Western Savings Society v. Philadelphia*, 31 Pa. St. 175, are cited and approved. In *Lloyd v. Mayor of New York*, *supra*, it is said:

"The corporation of the city of New York possesses two kinds of power, one governmental and public, and, to the extent they are held and exercised, is clothed with sovereignty, the other private, and to the extent they are held and exercised, is a legal individual. The former are given and used for public purposes, the latter for private purposes. While in the exercise of the former, the corporation is a municipal government, and while in the exercise of the latter, is a corporate legal individual."

See also *Dillon Mun. Corp.* 66, 4th ed.; *City of Petersburg v. Applegarth's Administrator*, 26 Gratt. 321, 343; and *Oliver v. Worcester*, 102 Massachusetts, 489.

In view of the dual character of municipal corporations there is no public reason for presuming their total dissolution as a mere consequence of military occupation or territorial cession. The suspension of such governmental functions as are obviously incompatible with the new political relations thus brought about may be presumed.

220 U. S.

Opinion of the Court.

But no such implication may be reasonably indulged beyond that result.

Such a conclusion is in harmony with the settled principles of public law as declared by this and other courts and expounded by the text books upon the laws of war and international law. Taylor International Public Law, § 578.

That there is a total abrogation of the former political relations of the inhabitants of the ceded region is obvious. That all laws theretofore in force which are in conflict with the political character, constitution or institutions of the substituted sovereign lose their force, is also plain. *Alvarez v. United States*, 216 U. S. 167. But it is equally settled in the same public law that that great body of municipal law which regulates private and domestic rights continues in force until abrogated or changed by the new ruler. In *Chicago, Rock Island & Pacific Railway Co. v. McGlinn*, 114 U. S. 542, 546, it was said:

“It is a general rule of public law, recognized and acted upon by the United States, that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions and constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power—and the latter is involved in the former—to the United States, the laws of the country in support of an established religion, or abridging the freedom of the

press, or authorizing cruel and unusual punishments, and the like, would at once cease to be of obligatory force without any declaration to that effect; and the laws of the country on other subjects would necessarily be superseded by existing laws of the new government upon the same matters. But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general, that a change of government leaves them in force until, by direct action of the new government, they are altered or repealed."

The above language was quoted with approval in *Downes v. Bidwell*, 182 U. S. 244, 298.

That the United States might, by virtue of its situation under a treaty ceding full title, have utterly extinguished every municipality which it found in existence in the Philippine Islands may be conceded. That it did so in view of the practice of nations to the contrary is not to be presumed and can only be established by cogent evidence.

That during military occupation the affairs of the city were in a large part administered by officials put in place by military order did not operate to dissolve the corporation or relieve it from liability upon obligations incurred before the occupation nor those created for municipal purposes by the administrators of its affairs while its old officials were displaced. *New Orleans v. Steamship Co.*, 20 Wall. 387, 394. During that occupation and military administration the business of the city was carried on as usual. Taxes were assessed and taxes collected and expended for local purposes, and many of the officials carrying on the government were those found in office when the city was occupied. The continuity of the corporate city was not inconsistent with military occupation or the constitution or institutions of the occupying power. This

220 U. S.

Opinion of the Court.

is made evident by the occurrences at the time of capitulation. Thus the articles of capitulation concluded in these words: "This city, its inhabitants . . . and its private property of all descriptions are placed under the special safeguard of the faith and honor of the American Army." This was quoted in President McKinley's instructions of April 7, 1900, to the Philippine Commission, and touching this he said: "I believe that this pledge has been faithfully kept." And the commission was directed to labor for the full performance of this obligation. This instruction was in line with and in fulfillment of the eighth article of the treaty of Paris of December 10, 1898. Under the third article of that treaty the archipelago known as the Philippine Islands was ceded to the United States, the latter agreeing to pay to Spain the sum of twenty million dollars. Under the first paragraph of the eighth article Spain relinquished to the United States "all buildings, wharves, barracks, forts, structures, public highways and other immovable property which, in conformity with law, belong to the public domain, and as such belong to the crown of Spain." It is under this clause, in connection with the clause agreeing to pay to Spain twenty million dollars for the cession of the Philippine group, that the contention that all of the public rights of the city of Manila were acquired by the United States, which country was therefore justified, as absolute owner, in granting the property rights so acquired to what is called the "absolutely new corporation," created thereafter. But the qualifying words touching property rights relinquished by Spain limit the relinquishment to "property which, in conformity with law, belongs to the public domain, and *as such belongs to the crown of Spain.*" It did not affect property which did not, in "conformity with law, belong to the crown of Spain." That it was not intended to apply to property which, "in conformity with law," belonged to the city of Manila as a municipal cor-

poration is clear. This is demonstrated by the second paragraph of the same article, which reads: And it is hereby declared that the relinquishment or cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of property of all kinds, of provinces, municipalities, public or private establishments. . . . having legal capacity to acquire and possess property in the aforesaid territory renounced or ceded, or of private individuals. . . ." Thus the property and property rights of municipal corporations were protected and safeguarded precisely as were the property and property rights of individuals.

That the cession did not operate as an extinction or dissolution of corporations is herein recognized, for the stipulation against impairment of their property rights has this plain significance.

The conclusion we reach that the legal entity survived both the military occupation and the cession which followed finds support in the cases which hold that the Pueblos of San Francisco and Los Angeles, which existed as municipal organizations prior to the cession of California by Mexico, continued to exist with their community and property rights intact. *Cohas v. Raisin*, 3 California, 443; *Hart v. Burnett*, 15 California, 530; *Townsend v. Greeley*, 5 Wall. 326; *Merryman v. Bourne*, 9 Wall. 592, 602; *More v. Steinbach*, 127 U. S. 70; *Los Angeles Milling Co. v. Los Angeles*, 217 U. S. 217.

Was corporate identity and corporate liability extinguished as a necessary legal result of the new charter granted in 1901 by the Philippine Commission? The inhabitants of the old city are the incorporators of the new. There is substantially identity of area. There are some changes in the form of government and some changes in corporate powers and methods of administration. The new corporation is endowed with all of the property and

220 U. S.

Opinion of the Court.

property rights of the old. It has the same power to sue and be sued which the former corporation had. There is not the slightest suggestion that the new corporation shall not succeed to the contracts and obligations of the old corporation. Laying out of view any question of the constitutional guarantee against impairment of the obligation of contracts, there is, in the absence of express legislative declaration of a contrary purpose, no reason for supposing that the reincorporation of an old municipality is intended to permit an escape from the obligations of the old, to whose property and rights it has succeeded. The juristic identity of the corporation has been in no wise affected, and, in law, the present city is in every legal sense the successor of the old. As such it is entitled to the property and property rights of the predecessor corporation, and is, in law, subject to all of its liabilities. *Broughton v. Pensacola*, 93 U. S. 266; *Mount Pleasant v. Beckwith*, 100 U. S. 520; *Mobile v. Watson*, 116 U. S. 289; *Shapleigh v. San Angelo*, 167 U. S. 646, 655; *O'Connor v. Memphis*, 6 Lea, 730; *Colchester v. Seaber*, 3 Burrows, 1866, 1870, in which case, when a municipality became disabled to act and obtained a new charter, in an action upon an obligation of the old corporation, there was judgment for the creditor, Lord Mansfield saying:

“Many corporations, for want of legal magistrates, have lost their activity, and obtained new charters. Maidstone, Radnor, Carmarthen, and many more are in the same case with Colchester. And yet it has never been disputed but that the new charters revive and give activity to the old corporation; except, perhaps, in that case in *Levinz*, where the corporation had a new name; and even there the court made no doubt. Where the question has arisen upon any remarkable metamorphosis, it has always been determined that they remain the same, as to debts and ‘rights.’”

Morris & Cummings v. State, 63 Texas, 728, 730.

In *Shapleigh v. San Angelo*, *supra*, this court said in a similar case:

"The State's plenary power over its municipal corporations to change their organization, to modify their method of internal government, or to abolish them altogether, is not restricted by contracts entered into by the municipality with its creditors or with private parties. An absolute repeal of a municipal charter is therefore effectual so far as it abolishes the old corporate organization; but when the same or substantially the same inhabitants are erected into a new corporation, whether with extended or restricted territorial limits, such new corporation is treated as in law the successor of the old one, entitled to its property rights, and subject to its liabilities."

The cases of *Trigas* and *Vilas* went off upon demurrers, and no question of remedy arises here.

The appeal of Aguado is from a decree upon a final hearing denying him all relief.

That all three of the plaintiffs in error are entitled to proceed to judgment when they shall establish their several claims is obvious from what we have said. But in the *Aguado* case it is sought to establish his claim as a charge against certain property and funds held by the city as trustee, known as the Carriedo fund. In 1734 one Don Francisco Carriedo y Perodo bequeathed to the city a fund for the establishment of waterworks, to be kept as a separate fund and devoted to the erection and maintenance of the works. This fund was loyally kept and greatly increased and was enlarged by a special tax upon meat, devoted to that purpose. The works were finally completed in 1878, and have been since operated by the city, the income and special tax going to maintenance. Certain securities belonging to the fund are now held by the city, the income being applied to the operation of the works. Aguado took a contract to supply coal for the use of the

220 U. S.

Opinion of the Court.

Carriedo works and made a deposit to guarantee the contract. When the city was occupied by the American army it was indebted to him for coal so supplied, as well as for the deposit so made. That the coal was bought for and used in the operation of the Carriedo works is not denied. But there is no evidence that the credit was given to the Carriedo Fund so held in trust under the will of Carriedo. The contract was made with the Ayuntamiento of Manila, just as all other contracts for city supplies or works were made. The contract not having been made with special reference to the liability of the fund held in trust by the city, but apparently upon the general credit of the city, we are not disposed to reverse the judgment of the court below, holding that the claim of Aguado did not constitute a charge upon the Carriedo fund.

Aguado is, nevertheless, entitled to a judgment. The designation of the city in the petition as trustee may be regarded as descriptive. The debt having been incurred by the city, it must be regarded as a city liability. *Taylor v. Davis*, 110 U. S. 330, 336.

Our conclusion is that the decree in the *Aguado case* must be reversed and the case remanded, with direction to render judgment and such other relief as may seem in conformity with law. The judgments in the *Trigas* and *Vilas cases* will be reversed and the cases remanded with direction to overrule the respective demurrers, and for such other action as may be consistent with law, and consistent with this opinion.